



**TIGARD CITY COUNCIL  
BUSINESS MEETING**

**February 28, 2006**

**6:30 p.m.**

**TIGARD CITY HALL  
13125 SW HALL BLVD  
TIGARD, OR 97223**



**PUBLIC NOTICE:**

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

**SEE ATTACHED AGENDA**

A G E N D A  
TIGARD CITY COUNCIL MEETING  
FEBRUARY 28, 2006

6:30 PM

- STUDY SESSION

- > IGA – Goal 5 Fish & Wildlife Habitat – Tualatin Basin Partners
  - Staff Report: Community Development Department
- > Hall Blvd. Jurisdictional Transfer Discussion
  - Staff Report: Engineering Department
- > Hall Blvd./Highway 99W Design Modifications
  - Staff Report: Community Development Department
- > Urban Services Intergovernmental Agreement with Cities of Tigard, Tualatin, Beaverton, and Wilsonville, and Washington County (Washington County – Wilsonville to Beaverton Commuter Rail Project)
  - Staff Report: Community Development Department
- > Wildlife Refuge Opening Event
  - Staff Report: Community Development Department

- EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss pending litigation under ORS 192.660(2)(h). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

- 1. BUSINESS MEETING

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports
- 1.5 Call to Council and Staff for Non-Agenda Items

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)

- Tigard Area Chamber of Commerce
- Follow-up to Previous Citizen Communication

3. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:

- 3.1 Approve Council Minutes for January 17 and 24, 2006
- 3.2 Approve First Amendment to Urban Services Intergovernmental Agreement with Cities of Tigard, Tualatin, Beaverton, and Wilsonville, and Washington County (Washington County – Wilsonville to Beaverton Commuter Rail Project)
- 3.3 Approve Intergovernmental Agreement (IGA) – Organization and Function of the Tualatin Basin Natural Resource Coordinating Committee
- *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*

4. PUBLIC HEARING (QUASI-JUDICIAL): VACATION OF AN UN-NAMED PUBLIC RIGHT-OF-WAY EAST OF SW 74<sup>TH</sup> AVENUE AND EAST OF THE S P & S RAILROAD RIGHT-OF-WAY, NORTH OF DURHAM ROAD (VAC2005-00003)

The purpose of the public hearing is to consider a request by Larusso Concrete Company, Inc. and Richard Akerman & James Wathey concerning the proposed vacation involving an approximately 7,845 square foot portion of an un-named public right-of-way.

The petition was filed with the City on November 15, 2005 and initiated by the City Council at the request of the applicant on December 20, 2005. Any interested person may appear and be heard for or against the proposed vacation of said Un-Named Portion of Public Right-of-way East of SW 74<sup>th</sup> Avenue Vacation. Any written objections or remonstrances shall be filed with the City Recorder by **7:30 PM on February 28, 2006.**

- a. Open Public Hearing - Mayor
- b. Staff Report: City Attorney and Community Development Staff
- c. Declarations or Challenges
- d. Public Testimony
  - Proponents
  - Opponents
  - Rebuttal
- e. Staff Recommendation
- f. Council Discussion
- g. Close Public Hearing
- h. Council Consideration: Ordinance No. 06-\_\_\_\_\_

5. PUBLIC HEARING (QUASI-JUDICIAL): VACATION OF FIVE SMALL PORTIONS OF PUBLIC RIGHT-OF-WAY TOTALING 3,392 SQUARE FEET ALONG SW 68<sup>TH</sup> PARKWAY AND 69<sup>TH</sup> AVENUE (VAC2005-00004 & VAC2005-00005 )

The purpose of the public hearing is to consider a request by Specht Development, Inc. concerning the proposed vacation involving five (5) small portions of public right-of-way totaling 3,392 square feet.

The petition was filed with the City on September 9, 2005 and initiated by the City Council at the request of the applicant on January 10, 2006. Any interested person may appear and be heard for or against the proposed vacation of said 68<sup>th</sup> Parkway Public Right-of-Way Vacation and 69<sup>th</sup> Avenue Public Right-of-Way Vacation. Any written objections or remonstrances shall be filed with the City Recorder by **7:30 PM on February 28, 2006.**

- a. Open Public Hearing - Mayor
- b. Staff Report: City Attorney and Community Development Staff
- c. Declarations or Challenges
- d. Public Testimony
  - Proponents
  - Opponents
  - Rebuttal
- e. Staff Recommendation
- f. Council Discussion
- g. Close Public Hearing
- h. Council Consideration: Ordinance No. 06-\_\_\_\_\_

6. PUBLIC HEARING (QUASI-JUDICIAL) LAND USE BOARD OF APPEALS (LUBA) REMAND OF ASH CREEK ESTATES SUBDIVISION (SUB) 20003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ZONE CHANGE (ZON) 2003-0003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ADJUSTMENT (VAR) 2003-00036/ADJUSTMENT (VAR) 2003-00037

The State Land Use Board of Appeals (LUBA) has remanded for a second time the City Council's approval of a 29-lot Planned Development Subdivision on 9.3 acres and associated Zone Change, Sensitive Lands, and Adjustment reviews to address a single issue relating to tree preservation. As limited by LUBA, the issue remanded is whether the tree plan preserves trees to the greatest extent possible, given that the second tree plan does not protect 23 trees designated for protection in the original tree plan, but not designated for protection in the revised tree plan previously approved. On this second remand, the applicant has submitted a second revised tree plan that amends the first revised tree plan by designating for protection the 23 trees specifically mentioned by LUBA. A full copy of LUBA's Final Opinion and Order can be obtained from City Hall at cost, or is also available online at <http://luba.state.or.us/pdf/2005/sept05/05042.htm>. **LOCATION:** 9750 SW 74<sup>th</sup> Avenue; WCTM 1S125DC, Tax Lots 300 and 400. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **APPLICABLE REVIEW CRITERIA:** The only applicable criterion on the issue on which LUBA remanded is CDC 18.350.100.B.3.a.1, which requires that planned developments protect existing trees to the greatest degree possible.



- a. Open Public Hearing - Mayor
  - b. Staff Report: City Attorney and Community Development Staff
  - c. Declarations of Challenges
  - d. Public Testimony
    - Proponents
    - Opponents
    - Rebuttal
  - e. Staff Recommendation
  - f. Council Discussion
  - g. Close Public Hearing
  - h. Council Consideration: Resolution No. 06-\_\_\_\_\_
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7. LOCAL CONTRACT REVIEW BOARD: POST-PROJECT EVALUATION REPORT OF THE CM/GC (CONSTRUCTION MANAGER/GENERAL CONTRACTOR) CONTRACT FOR THE TIGARD NEW LIBRARY PROJECT
    - Staff Report: Engineering Department
  
  8. CONSIDER AN INTERGOVERNMENTAL AGREEMENT (IGA) FOR JOINT FUNDING OF A WATER SUPPLY SYSTEM PLAN WITH THE CITY OF LAKE OSWEGO
    - Staff Report: Public Works Department
    - Council Discussion
    - Council Consideration of IGA
  
  9. CONSIDER PURSUING DESIGN MODIFICATION OF THE INTERSECTION AT HALL BLVD AND 99W TO INCLUDE PEDESTRIAN IMPROVEMENTS, LANDSCAPING ENHANCEMENTS AND A POTENTIAL GATEWAY
    - Staff Report: Community Development Department
    - Council Discussion
    - Council Direction to Staff
  
  10. CONSIDER A RESOLUTION TO ESTABLISH A PROPOSED LOCAL IMPROVEMENT DISTRICT (LID) AS A PROJECT IN THE FY 2005-06 CAPITAL IMPROVEMENT PROGRAM (CIP), AND DIRECTING THE PREPARATION OF A PRELIMINARY ENGINEER'S REPORT FOR THE PROPOSED LID IN THE TIGARD TRIANGLE AND AUTHORIZING THE ESTABLISHMENT OF A FUNDING MECHANISM FOR THE PREPARATION OF THE REPORT
    - Staff Report: Engineering Department
    - Council Discussion
    - Council Direction to Staff

10. CONSIDER BUDGET AMENDMENT #10 TO THE FY 2005-06 BUDGET TO INCREASE APPROPRIATIONS IN THE GAS TAX FUND FOR FUNDING OF THE PRELIMINARY ENGINEER'S REPORT FOR THE PROPOSED LOCAL IMPROVEMENT DISTRICT (LID) FOR INFRASTRUCTURE IMPROVEMENTS IN THE TIGARD TRIANGLE
  - Staff Report: Finance/Engineering Department
  - Council Discussion
  - Council Consideration: Resolution No. 06-\_\_\_\_\_
11. NON AGENDA ITEMS
12. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
13. ADJOURNMENT

Agenda Item No. \_\_\_\_\_  
For Agenda of \_\_\_\_\_



### *Tigard City Council Meeting Minutes*

Date: January 17, 2006  
Time: 6:36 p.m.  
Place: Tigard City Hall, 13125 SW Hall Boulevard  
Tigard, Oregon  
Attending: Mayor Craig Dirksen Presiding  
Councilor Sally Harding  
Councilor Sydney Sherwood  
Councilor Nick Wilson  
Councilor Tom Woodruff

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Agenda Item	Discussion & Comments	Action Items (follow up)
Workshop Meeting	<p>1.1 Mayor Dirksen called the City Council and the Local Contract Review Board to Order at 6:36 p.m.</p> <p>1.2 Council Present: Mayor Dirksen, Councilors Harding, Sherwood, Wilson, and Woodruff.</p> <p>1.3 Pledge of Allegiance</p> <p>1.4 Council Communications &amp; Liaison Reports:</p> <p>Councilor Sherwood announced that some public facilities projects will be funded by the Community Development Block Grant program. Requests for funding from this program far exceeded the amount available. She advised that the Garrett Street sidewalk will be funded.</p> <p>1.5 Call to Council and Staff for Non-Agenda Items</p> <p>An Executive Session was held at the end of the meeting.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
2. Budget Committee Meeting	<p>Budget Committee Members Present: Mayor Dirksen, Councilor Harding, Councilor Sherwood, Councilor Wilson, Councilor Woodruff, Rick Parker, Katie Schwab, Jason Snider, and Susan Yesilada.</p> <p>Interim Finance Director Imdieke introduced this agenda item.</p> <p><b>Budget Amendments</b> - Finance Analyst Wareing reviewed budget amendments, year to date. A copy of the list of the amendments is on file in the City Recorder's office.</p> <p><b>Financial Results – First Half of FY 2005-06</b> - Interim Finance Director Imdieke reviewed the City's financial status for the first half of this fiscal year. A copy of the 2005-2006 Budget to Actual summary is on file in the City Recorder's office. Revenues, including franchise fees to be received should be on target. Expenditures are less than 50% spent except for Social Services (because of timing of the release of funds after application) and the Mayor/Council budget (because League of Oregon Cities and National League of Cities dues are paid at the beginning of the fiscal year). The General Fund is "coming in on target"; in fact, there may be \$1 million more at the end of the fiscal year than what was projected because more revenue is coming in and expenditures have been kept under control.</p> <p>Mayor Dirksen suggested that to make the summary more realistic, anticipated revenue could be shown. Interim Finance Director Imdieke said he could put together another summary, with the figures based on historical patterns.</p> <p><b>Financial Forecast for the Period FY 2006-07 through FY 2010-11</b> – Interim Finance Director Imdieke's remarks were highlighted with a PowerPoint presentation. A copy of this presentation is on file in the City Recorder's office. Interim Finance Director Imdieke and City Manager Prosser commented that the projected deficit occurs in 2009-10, which is a year later than earlier</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>calculations due to an optimistic economy, tighter controls and continuing efforts to push the deficit out a year.</p> <p>It was pointed out that the public's perception may be that, with new construction activity on large developments, the City experiences a revenue "windfall." However, under the current tax system, new construction is not taxed at 100% of its value; it is taxed at 70% which is the average of what others are paying in property taxes based on valuation.</p> <p>Interim Finance Director Imdieke reviewed the forecast for road funds noting that expenditures projected for capital improvements represent only what the City thought it could afford and not the total need.</p> <p>In his review of the parks fund, Interim Finance Director Imdieke advised there is a need to identify non-System Development Charge (SDC) revenues to fund parks since SDC's cannot be used for park improvements. The Parks and Recreation Advisory Board (PRAB) and staff are looking at non-SDC funding sources to use as leverage to purchase park properties.</p> <p>Interim Finance Director Imdieke reviewed the status of development funds and noted that in the urban services area a one-year operating reserve is maintained in the event there is a downturn in the economy. The last major fee increase associated with development funds was in 2000.</p> <p>The status of the water fund might change, depending on the City's decision on what option to pursue for a long-term water supply.</p> <p>Interim Finance Director Imdieke advised that the capital funds are decreasing in the sewer funds because of the sewer reimbursement program; however, that fund will start to rebuild when property owners sign on for sewer service. The challenge in this area is to make sure that Clean Water Services (CWS) continues to make rate adjustments from which the City will receive a</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>proportionate share for operations and capital projects. City Manager Prosser advised that after the last three or four CWS rate increases, revenues to cities were reduced as CWS is using the increases for debt service for the expansion of treatment facilities.</p> <p>There was discussion of the traffic impact fees, which are projected to decrease.</p> <p>City Manager Prosser advised that the financial forecast will continue to be updated.</p> <p><b>Financial Strategy Task Force</b> – Interim Finance Director Imdieke advised the Task Force will receive the updated financial information to be incorporated into the report to be presented to the City Council in a February workshop meeting. The citizen members of the Budget Committee will be asked to attend that workshop meeting.</p> <p><b>Social Services</b> – Financial Analyst Wareing noted that grant applications were recently mailed out. The review schedule for the subcommittee for social services and community events was outlined.</p>	<p>Rick Parker, Sue Yesilada, and Nick Wilson will serve on the Social Services Subcommittee.</p>
<p>3. Commuter Rail Station Enhancements</p>	<p>Interim Community Development Director Coffee, Senior Planner Nachbar, and TriMet Representative Witter reviewed this agenda item with the City Council. The staff report, background information and cost comparison information, which was reviewed and discussed by the City Council, is on file in the City Recorder's office.</p> <p>As part of the overall program for Commuter Rail Station improvements, TriMet budgets and provides funding for a set of basic improvements common to all stations that includes a rail station platform, a shelter, a park and ride facility and certain landscape improvements.</p> <p>Council discussion included:</p>	<p>After lengthy discussion and a review of the options, Council directed staff to prepare a resolution for Council's consideration which will support the "Interstate Design" for the shelter and to earmark needed funds in the General Fund budget. Mr. Witter noted that three benches per platform were included in TriMet's design and that TriMet could arrange to pour another footing at the time the Tigard station is completed so the structure</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> <li>• A review of TriMet's proposed station design option.</li> <li>• A review of the recommendation of the design as originally proposed by the Downtown Task Force.</li> <li>• TriMet now scaling back to a lower-cost prefabricated station structure to realign estimated costs and budget. As time goes by, costs escalate, which impacts what can be done with the available funding.</li> <li>• Review of aesthetics and available budget.</li> <li>• Review of commuter rail passenger comfort: benches, windscreens for protection from weather, and length of wait between trains.</li> <li>• TriMet's shelter design is basically a "cover."</li> <li>• Disappointment expressed with the reduction from the original design proposed by the Downtown Task Force.</li> <li>• The station is the initial project to improve the downtown, so it is important to set the tone and demonstrate the types of improvements desired.</li> <li>• Discussed projected commuter rail ridership.</li> <li>• Viewpoint expressed that the shelter design will not keep people from riding the commuter rail; keep the station functional and fund less costly aesthetic improvements.</li> <li>• Of the \$150,000 currently allocated for the downtown, \$75,000 has been earmarked by the City for the station.</li> </ul>	<p>could be expanded later. Tigard contributions to station funding will need to be available the latter part of 2007.</p>
4. Annexation Policy	<p>The following staff members participated in this discussion with the City Council: Interim Community Development Director Coffee, Planning Manager Bewersdorff, and Associate Planner Pagenstecher.</p> <p>Discussion highlights included the following:</p> <ul style="list-style-type: none"> <li>• Overview of annexation background with previous stance by Washington County that cities should provide urban services and that the City of Tigard would expand into its urban service area.</li> <li>• Factors affecting annexation:</li> </ul>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> <li>○ Comprehensive Plan</li> <li>○ Intergovernmental agreements with Washington County</li> <li>○ State law</li> <li>○ City of Tigard Development Code</li> <li>○ Consents to annexation</li> <li>○ Current administrative policy</li> <li>○ Bull Mountain annexation vote in 2004.</li> <li>● Referenced two letters received from State Representative Jerry Krummel; evaluation is needed.</li> <li>● Reviewed options of City Council (see January 3, 2006 memorandum from Interim Community Development Director Coffee and Associate Planner Pagenstecher regarding City of Tigard annexation policy). Options were for the City of Tigard to be 1) aggressive, 2) proactive, 3) reactive, or 4) inactive.</li> <li>● Areas in unincorporated county that are already developed have no incentives to annex.</li> <li>● The City of Tigard currently annexes in the “reactive” mode; if the City continues this policy, it is unlikely the City’s boundaries will ever extend to the urban services boundary.</li> <li>● If the City chooses a proactive policy, State law allows the City to annex islands. Initiating island annexations has not been the practice of the City.</li> <li>● An aggressive annexation policy, including cherry-stem annexations is not politically palatable.</li> <li>● A suggestion was made that the City consider its boundaries to be essentially set.</li> <li>● The Comprehensive Plan update is now underway. Boundaries will be a consideration.</li> <li>● An observation was made that it is a struggle to quantify the alternatives for annexation options. If a new City is formed on Bull Mountain – a real City that is self-sustaining with services such as a library and parks – there would be less concern. Also unknown is whether the new City would extend to the urban growth boundary.</li> <li>● There are positives for each of the annexation policy options. In the long-term view, the question is which is the correct decision? There was concern expressed that development might</li> </ul>	



Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>occur that will prove to be detrimental.</p> <ul style="list-style-type: none"> <li>• There was no support expressed for cherry-stem annexations (aggressive policy) in order to facilitate potential annexation of areas 63 and 64.</li> <li>• The proactive annexation policy appears to be beneficial in that it would bring undeveloped parcels into the City.</li> <li>• A decision should be made about the City's planning area relating to the Comprehensive Plan update. It was suggested that the City plan for undeveloped areas so if these areas come into the City, the planning would be done.</li> <li>• Density requirements in the urban growth boundary would be no different whether the property is in or out of the City. If the property was located in the City, density could be transferred to the downtown or the Washington Square areas.</li> <li>• There was mention of a policy decision that would be needed on property owned outside the City (Cache Creek property). Options would include: 1) keep the area as an extra-territorial park, 2) sell the property, 3) give the property to another city.</li> <li>• It was noted that the Tigard constituency does not appear to support aggressive or even proactive annexations. Tigard citizens appear to be more in favor with what the City is doing now, which is a reactive policy (wait for parcels to ask to be annexed).</li> <li>• Interim Community Development Director Coffee suggested a systematic review of the City's boundary.</li> <li>• Mayor Dirksen said he supports double or triple majority annexations.</li> <li>• Councilor Woodruff supported the democratic process of annexing those properties where property owners have indicated they want to come into the City.</li> <li>• Councilor Harding suggested the City take a time out and let others explore their options. If a property owner asks to be annexed and if the property is contiguous to the current City boundaries, then she would support the annexation request.</li> </ul>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> <li>• The Comprehensive Plan, Washington County intergovernmental agreements, and the Bull Mountain Community Plan all indicate that the City of Tigard should be the ultimate service provider for the urban services area.</li> <li>• There was a suggestion that it might be time to review the Washington County intergovernmental agreements. In response to the discussion, City Manager Prosser advised the funds received by the City from the County cover the costs of the services provided by the City as outlined in the intergovernmental agreements.</li> <li>• It was suggested that the City Council would know more in about a year, once it is known whether a new city will be formed on Bull Mountain.</li> <li>• Councilor Wilson pointed out that the vision established 30 years ago regarding urban services does not appear to have any possibility of working.</li> <li>• Interim Community Development Director Coffee suggested that Goal 14 will be addressed during the Comprehensive Plan review; the “mechanisms” have not happened. Tigard’s area of interest may be redefined. The current practice for annexation will continue.</li> <li>• The City Council talked of annexation incentives. There was no support at this time to offer a phase-in of taxes; however, the City Council might consider waiving the fee for annexation.</li> </ul>	
	<p>Meeting recessed: 9:26 p.m. Meeting reconvened: 9:35 p.m.</p>	
5. Mayor and Council Budget	<p>Assistant to the City Manager Newton reviewed with the City Council the preliminary Mayor and Council FY 06-07 Budget request as prepared by Administration Department staff.</p> <p>There was discussion about the majority of the League of Oregon Cities dues being shown as an expenditure in the Council’s budget.</p>	<p>Staff will prepare a cost allocation model for League of Oregon Cities dues.</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
	The performance audit will be added to next year's Council budget. There was discussion about the scope of the audit, which will set up a review of City policies, procedures, and operations.	At the request of Councilor Woodruff, staff will prepare budget information showing what was budgeted in 05-06 along with the Budget request for 06-07.
6. Executive Session	The Tigard City Council went into Executive Session at 9:52 p.m. to discuss potential litigation under ORS 192.660(2)(h).	
7. Adjournment	The meeting adjourned at 10:13 p.m.	<p>Motion by Councilor Woodruff, seconded by Councilor Wilson, to adjourn meeting.</p> <p>The motion was approved by a unanimous vote of the City Council present:</p> <p>Mayor Dirksen: Yes  Councilor Harding: Yes  Councilor Sherwood: Yes  Councilor Wilson: Yes  Councilor Woodruff: Yes</p>

\_\_\_\_\_  
Catherine Wheatley, City Recorder

Attest:

\_\_\_\_\_  
Mayor, City of Tigard

Date: \_\_\_\_\_

Agenda Item No. \_\_\_\_\_  
For Agenda of \_\_\_\_\_



### *Tigard City Council Meeting Minutes*

Date: January 24, 2006  
Time: 6:30 p.m.  
Place: Tigard City Hall, 13125 SW Hall Boulevard  
Tigard, Oregon  
Attending: Mayor Craig Dirksen Presiding  
Councilor Sally Harding  
Councilor Sydney Sherwood  
Councilor Nick Wilson  
Absent: Councilor Tom Woodruff

Agenda Item	Discussion & Comments	Action Items (follow up)
Study Session  Discuss Use of New Logo	<p>Business Card Design Review – Assistant to the City Manager Newton reviewed this agenda item. Council preferences for business cards included: Landscape orientation, heavier stock and white paper (not grey). The Core Values should not be printed on the back. Cards are due to be redone because of the City's website address change. Assistant to the City Manager Newton discussed printing costs and the Council consensus was to go without embossing.</p> <p>Assistant to the City Manager Newton said the police have a patch on their uniforms that immediately identifies them as police officers. They have requested to be allowed to use the new logo inside a shield outline. Deviation of the logo shape will be acceptable for the police but all other uses will be standardized. Police staff members had drawn up a few suggestions that were discussed by Council. A simple design was preferred. The police also want the shield design on their cars and will put together some suggestions, including the italic Garamond font for vehicle lettering. The City's standard logo will appear on other City vehicles.</p> <p>Forms will be revised inhouse.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
Executive Session	<p>The Council went into Executive Session at 7 p.m. to discuss exempt public records and potential litigation under ORS 192.660(2)(f) and (h).</p> <p>Executive Session concluded at 7:21 p.m.</p>	
1. Business Meeting	<p>1.1 Mayor Dirksen called the City Council and the Local Contract Review Board to Order at 7:30 p.m.</p> <p>1.2 Council Present: Mayor Dirksen, Councilors Harding, Sherwood, and Wilson. Council Absent: Councilor Woodruff</p> <p>1.3 Pledge of Allegiance</p> <p>1.4 Council Communications &amp; Liaison Reports</p> <p>1.5 Call to Council and Staff for Non-Agenda Items</p>	
2. Citizen Communication	<ul style="list-style-type: none"> <li>◦ Tigard Area Chamber of Commerce Executive Director Jeremy was present. Mr. Monlux reported that things are going well at the Chamber. He is finding that Tigard is a very hardworking, busy community with many issues. He feels people are looking forward to urban renewal. The Chamber is starting a nine-month program of leadership sessions designed to foster, empower and support future business leaders. Councilor Sherwood said she would like to see a partnership again between the City and the Chamber. Mayor Dirksen said the leadership program sounded interesting. Mr. Monlux will return to talk to the City Council about this plan. Councilor Harding asked whether the networking breakfasts are open to all. Mr. Monlux indicated that the Tigard Business Connection breakfasts are held on the 2<sup>nd</sup> and 4<sup>th</sup> Tuesdays and are open to everyone, as are their regular Thursday breakfast meetings.</li> </ul>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<ul style="list-style-type: none"> <li>◦ John Frewing spoke about the Parks System Development Charges. He said he spoke at a council meeting one year ago saying he felt these charges were too low and needed to be revised annually. His concern was that the property values continue to rise and the SDC's need to keep pace. Mayor Dirksen asked Dan Plaza to comment and Mr. Plaza said SDC's are reviewed each January 1<sup>st</sup>.</li> <li>◦ Dave George, of 13132 SW Ascension Drive in Tigard, representing his neighbors and himself. He said their concern is the lack of parks and open spaces. As a teacher he used open spaces as outdoor classrooms and feels that many people enjoy hiking, bird watching and observing wildlife. He is frustrated to see so many open areas disappearing due to development.</li> </ul> <p>Mayor Dirksen said the City of Tigard shares his concern and would like for the City to have more local control over items such as density. He said this Council is looking for properties not only inside but outside of the Tigard city limits for future open spaces and parks.</p> <p>Councilor Wilson said he was disappointed in a recent public opinion poll that indicated people were not interested in spending much for parks. He suggested that Mr. George and others talk it up among their neighbors. He would like a bond measure for parks.</p>	
	<ul style="list-style-type: none"> <li>◦ Follow-up to Previous Citizen Communication: None</li> </ul>	No action.
3. Consent Agenda	3.1 Approve Council Minutes for December 20, 2006	<p>Motion by Councilor Sherwood, seconded by Councilor Wilson, to approve the Consent Agenda.</p> <p>The motion was approved</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
		<p>by a unanimous vote of Council present.</p> <p>Mayor Dirksen      Yes  Councilor Harding    Yes  Councilor Sherwood   Yes  Councilor Wilson      Yes</p>
4. Approve 2006 City Council Goals	<p>Mayor Dirksen reviewed the 2006 Goals in a PowerPoint presentation. A copy of this is available in the City Recorder's office.</p>	<p>Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve the 2006 Council Goals.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen      Yes  Councilor Harding    Yes  Councilor Sherwood   Yes  Councilor Wilson      Yes</p>
5. Report on Tigard Vision 2005 Accomplishments Update	<p>Risk Manager Mills gave a presentation on the Tigard Vision. This report is now available at the Library and on the city website. She felt it was appropriate that the Tigard Vision report followed the Council goals presentation because what people have asked for is being reflected in the Council's goals and it shows that the Council and City are listening to the public.</p>	<p>Report/No action.</p>
6. Update from Tualatin Riverkeepers about Activities in Tigard	<p>Waterwatch Coordinator Brian Wegener and TRK Board Member John Donnellson gave a presentation on current TRK activities in Tigard. They moved their headquarters to downtown Tigard this month. For 16 years TRK has been a leader in improving water quality and protecting and restoring the Tualatin River system. They hold annual river clean-ups, help improve and restore riparian habitat along Fanno Creek, the Brown Natural Area and along the Tualatin River. Their Paddler's Guide will be republished next month. The Tigard Community Development Department is contributing to TRK's reprint of the</p>	<p>Report/No action</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
	Field Guide to Erosion Prevention and Sediment Control, a publication for contractors and those who live near a site under construction. Mr. Wegener thanked the City for its support. The Tualatin Riverkeepers annual meeting will be held from 1:30-4:00 on Sunday, January 29 <sup>th</sup> at the Tigard Library.	
Agenda Item	Discussion & Comments	Action Items (follow up)
7. Consider Tualatin River Bicycle and Pedestrian Bridge Funding	<p>(Note Items were not discussed in order at the January 24, 2006 Council Meeting.)</p> <p>Parks Manager Dan Plaza reported that the latest information on the Tualatin River Bicycle and Pedestrian Bridge shows costs are up \$1.5 million. Tigard's share is \$592,578. The City of Tualatin's share is \$412,228, and Durham's share is \$25,764. Clean Water Services has committed to spend \$600,000 and will pay for all of the cost of running pipes under the bridge. Metro will not be participating in this project.</p> <p>Tualatin approved an Intergovernmental Agreement at their City Council meeting last week and Durham just approved it tonight. ODOT would like the City of Tigard to commit to their portion by January 31, 2006. Staff will also be preparing a budget amendment for Council to approve the additional cost.</p> <p>Parks Manager Dan Plaza went over the reasons for the higher project cost. The original project was going to be built of wood but the National Marine Fisheries Commission had concerns about the wood preservative being harmful to fish in the river. The bridge is now designed of steel and concrete. The ADA requirements for the ramps have added costs and the square footage is 20% higher. They had planned to use a crane to lift it into place but there are only two cranes in Oregon big enough and this is not a priority project for them. Now we have to build a work bridge at water level that will need to be torn down when the project bridge is completed. Steel costs have risen. Another issue is that there are currently 30 bridge projects ready to be bid in Portland. The design complexity of the 380' span and necessary environmental permitting also raise the cost.</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Wilson, to approve additional funds needed for the bridge, and for confirmation of this approval to be conveyed by letter to the City of Tualatin.</p> <p>After discussion, Councilor Wilson amended the motion to state that Tigard's share of the project is now \$592,578 and a budget amendment will be considered by the City Council on February 14, 2006.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen      Yes Councilor Harding    Yes Councilor Sherwood   Yes Councilor Wilson     Yes</p>



Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>The project goes to bid on February 2 with a bid opening on February 23<sup>rd</sup>. Construction will occur from April-December, 2006, with projected opening in January 2007.</p> <p>Metro Councilor Carl Hosticka noted that Metro was never asked to participate in any formal fashion. There are potential opportunities for grant monies but probably not anything that can come to fruition in the next few weeks. Councilor Hosticka asked that staff contact him and said he will consider any grant request submitted.</p> <p>In response to a concern from City Councilor Wilson about learning of the cost overrun at this time, Tualatin Community Development Director Hennon, Tualatin City Manager Wheeler and Tigard Parks Manager Plaza outlined the circumstances of the cost increases.</p> <p>There was discussion about where the additional funds would come from: \$200,000 would come from the MSTIP and the balance from park SDC's.</p> <p>In response to a question from Councilor Sherwood about whether this would affect the Greenburg Road project, Mayor Dirksen said he understands that these projects are funded from separate sources.</p> <p>During discussion, City Council members expressed support for going forward with the project. Any money left over will be refunded to the City.</p>	
<p>8. Metro Presentation - Proposed Nov. 2006 Bond Measure to Preserve Natural Areas, Improve Water Quality, and Protect Fish and Wildlife Habitat</p>	<p>Metro President David Bragdon and Metro Councilor Carl Hosticka gave a presentation on their proposed bond measure for the November 2006 ballot which will provide funding to purchase natural areas in the region for parks and open spaces. They are going to the various city councils in the area to let them know what they are doing and to hear any concerns the cities may have. They have scheduled public hearings to obtain input. President Bragdon felt that the need for this measure was supported tonight by the items listed on the Council's agenda and the comments made during citizen communication.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>Metro's 1995 Bond Measure helped Tigard by adding 8 acres to Cook Park, 2 acres along Fern Street and trail construction and right-of-way on the Fanno Creek Greenway. This new measure will help them continue targeting regional natural areas by acquisition, improvements and making opportunity grants available to "re-nature" neighborhoods. Tigard's share would be about \$1.3 million. The Fanno Creek Greenway and Tualatin River Greenway are included among the areas targeted by a blue ribbon committee.</p> <p>Councilor Harding expressed concern about the lack of open space within the urban growth boundary. Citizens are asking for help in getting more greenspaces and stopping development's encroachment.</p> <p>In response to Councilor Harding's concern about the high cost of property, Metro Councilor Hosticka said local efforts could be helped by using matching funds. He noted that the corridors are within the Urban Growth Boundary.</p> <p>Councilor Harding asked if Metro could take away some of the density requirements to help our citizens.</p> <p>Councilor Wilson said he appreciated being asked for input in advance. He thought the measure would be popular with people but noted that Metro's map shows some areas that are "pretty far flung" and not very accessible to people. He said those areas are attractive but he hears all the time that people want to be close to natural areas. Each development brings out angry neighbors who want more parks and open space. He asked if more areas could be added inside the Urban Growth Boundary because they contribute to how people live.</p> <p>Mayor Dirksen suggested adjusting the balance back towards the neighborhoods. He felt an important criterion for land selection is that the areas be close to people. He said that Metro, by choosing to run this regional bond measure, may be precluding Tigard's own bond measure to help ourselves. He asked if Mr.</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>Bragdon and Mr. Hosticka could stay because later in the meeting there would be a discussion on a list prepared by the Tigard Parks and Recreation Board of properties they want Metro to consider putting in their bond measure. Mr. Hosticka said we can acquire greenway properties with regional funds. Mayor Dirksen will forward the list to him.</p>	
<p>9. Consider a Resolution Approving the Submittal of the City of Tigard's Proposed Greenspace and Trail Projects for Inclusion in Metro's Natural Areas Bond Measure 2006</p>	<p>Parks Manager Dan Plaza described the process used by the Parks and Recreation Board to identify potential greenways, passive and active parks to be included in Metro's bond measure. The properties were 90% citizen and 10% staff identified. They did a willing-seller analysis and several property owners who would consider selling property for parks were identified. 17 acres of land, worth \$3.6 million were donated. By February 14<sup>th</sup> 2006, a more completed list will be available.. Mr. Plaza will forward this list to Metro.</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Wilson to approve Resolution No. 06-03.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen        Yes Councilor Harding    Yes Councilor Sherwood   Yes Councilor Wilson     Yes</p>
<p>10. Public Hearing (Quasi Judicial): Refuge at Fanno Creek <i>(Site Development Review SDR 200500002/ Sensitive Lands Review SLR 2005-00017, 18, 19 &amp; 20/ Adjustment VAR2005-00055 &amp; 56)</i></p>	<p>Mayor Dirksen opened the Public Hearing. City Attorney Ramis read the procedures and described the process. He read three options that the Council may consider tonight: 1) decide to not re-hear the matter; 2) agree that there is a fatal flaw in the design, approve with the secondary access deleted; and 3) not approve. Attorney Ramis contacted the railroad and they have not had enough time to review the issue.</p> <p>City Attorney Ramis asked the Council if they'd had ex-parte contact or if there were any other potential conflicts. Mayor Dirksen reported that he had viewed the property from North Dakota Street. He asked if they were familiar with the Council packet materials. He then asked if there were any challenges from the audience. There were none. He stated the order of testimony: (1) applicant, (2) those opposed, and then (3) applicant rebuttal. The hearing focus is narrow –</p>	<p>Motion by Councilor Wilson, seconded by Councilor Sherwood, that the Council uphold the hearings officer decision and decline to re-open the case.</p> <p>The motion was approved by a 3-1 vote of Council present.</p> <p>Mayor Dirksen        Yes Councilor Harding    No Councilor Sherwood   Yes Councilor Wilson     Yes</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>is there access across the railroad tracks for the secondary access?</p> <p>Dick Bewersdorff (City of Tigard Planning) stated that the secondary access is not a requirement of the project.</p> <p>Mayor Dirksen said it was unusual, bordering on unique, for the City Council to review a hearings officer decision and that no one should assume they will reopen future developments. He reminded everyone present that the testimony is limited to one issue. No other testimony will be allowed.</p> <p>Public Testimony:</p> <ul style="list-style-type: none"> <li>• Bob Van Brocklin, 900 SW Fifth, Suite 2600, Portland, OR. 97204 (representing the Applicant).</li> </ul> <p>Mr. Van Brocklin requested that the City of Tigard decline to exercise to review and allow the hearings officer decision to stand. He said this case went before a hearings officer who is an experienced land-use attorney and who, after considering all the evidence, approved it. Mr. Van Brocklin said there is considerable evidence to conclude that a 1965 Bargain &amp; Sale Deed granted public right to cross the railroad property. He said the issue was raised a few weeks ago by John Frewing but Mr. Frewing provided no new evidence. He said that practical interpretation of aerial photographs shows 60 years of easement in use, since at least 1936. Practical evidence is historical use. The county's own tax map shows this easement. There exists an underpass that is designed to get people from one side of the tracks to the other. In building a trestle the railroad acknowledges that there is access. The railroad has not objected to this easement. They are not here tonight and they have not objected in the course of the hearings. He requested that his letter of January 26, 2006 be</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>placed into the record.</p> <ul style="list-style-type: none"> <li>• Matt Sprague, 9020 SW Washington Square Drive, Tigard, Oregon 97223(representing the Applicant)</li> </ul> <p>Mr. Sprague displayed maps and photos of the property in question. He showed a tax lot map showing a dotted line and the word "easement". He had a photograph from 1936 showing a raised grade. A July, 1953 photograph showed a raised grade but no trestle yet. In 1968, the aerial photograph showed Cascade Boulevard and the trestle in place. In a 1977 aerial photo there is access to Cascade Boulevard as well as in a 1983 photograph. He brought in an enlarged copy of page 615 of the Bargain &amp; Sale Deed.</p> <ul style="list-style-type: none"> <li>• Sue Beilke, 11755 SW 114<sup>th</sup>, Tigard, OR 97223</li> </ul> <p>Ms. Beilke said she wanted the Council to review this matter because the Council is representing the people of Tigard and should protect the public health, safety and general welfare. She cited Section 18.705 of the Community Development Code – Access, Egress and Circulation. Attorney Ramis reminded her that the focus of this hearing is limited and she cannot address other issues. She then stated that the Friends of Summer Creek agrees with Mr. Frewing that there is not an easement. She also noted that the words, "Condominium Project" were shown on the agenda; this is an old project title.</p> <ul style="list-style-type: none"> <li>• John Frewing, 7110 SW Lola Lane, Tigard, OR 97223</li> </ul> <p>Mr. Frewing stated that two weeks ago he asked the Council to review this application. He said he has visited the property and there is a ditch at the trestle now. He said the applicants are required to show an easement</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>and they have not. He read the property descriptions of Parcel #1 and Parcel #2 on the 1965 Sale Deed while pointing to the drawing supplied by the applicant. He indicated where the property lines are in reference to the bridge and thinks there is no evidence that there is an easement through the railroad bridge. He said that deleting this access changes the application substantially. He asserted the proposed development application should be thrown out and started over. He checked on why the railroad isn't here tonight and wasn't here before. The City of Tigard sent out a notice to affected property owners listed on the Washington County tax rolls. The railroad is not on this list because they are taxed by the state, not the county. He said representatives from the railroad have not addressed this matter and that there is no easement. Mr. Frewing feels the application should be denied.</p> <ul style="list-style-type: none"> <li>• Gretchen Buehner, 13249 SW 136<sup>th</sup> Place, Tigard, OR 97223</li> </ul> <p>Ms. Buehner advised that she has researched old maps and deeds and finds that easements are not always labeled as such. They are sometimes referred to as private driveways. An easement cannot be terminated without agreement among all involved parties.</p> <p>Applicant Rebuttal</p> <ul style="list-style-type: none"> <li>• Matt Sprague asked that the Council to avoid getting bogged down in legal descriptions. The two parcels can use the easement. In 1907 the property was sold to the railroad and at that time an easement was reserved for the property. A railroad overpass was installed to provide access. The property owners didn't install the overpass, the railroad did.</li> <li>• Greg Corbin, 900 SW Fifth, Suite 2600, Portland, OR 97204</li> </ul>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>Mr. Corbin said there isn't anything new in the record. The survey map was presented at an earlier meeting. He said the Council is being asked to hear the same argument a second time. He said could not follow Mr. Frewing's description and said it would be difficult for anyone to follow. As to whether or not the deed recognizes an easement, the easement need not be in the parcels that are being conveyed. The easement may be in another location. The documents could be written more clearly. The fact that the deed describes two different properties is irrelevant. The property being conveyed has rights. The railroad has been contacted by the City and the fact that the railroad has made no comment does not mean that there is no easement.</p> <p>Council Discussion</p> <p>Councilor Harding said it would be nice if the railroad were represented at this meeting. There is no new evidence but there is still a question in her mind. The fact that the railroad is not here doesn't prove the existence of an easement.</p> <p>Mr. Corbin said all of this evidence was before the Hearings Officer when he made his decision. The evidence was substantial enough for him to make that decision.</p> <p>Mr. Sprague said the trestle is indicative that there is an easement in that location. The railroad would only have built it to allow people to cross under. By building a trestle, the railroad acknowledges that there is access. The railroad has not objected to this easement.</p> <p>Mr. Frewing stated that the applicant has not produced anything saying that the railroad gave anyone the easement.</p> <p>Councilor Wilson said that the adjacent property owners could not convey the railroad</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>easement because it was not theirs to convey; however, this does not imply that there is no easement. He said he would vote not to reopen the case.</p> <p>Attorney Ramis said Mr. Frewing does make a point that the property deeds do not show access but it is an overstatement to say there is no evidence of the right to cross. There is a great deal of indirect evidence.</p> <p>Councilor Harding said she would rather not see the second access.</p> <p>Mayor Dirksen said he came to the meeting tonight ready to approve striking the second access but the testimony convinces him that there is a historical easement. If there is an access concern in the future, the dispute will be between the railroad and the applicant.</p>	
<p>11. Consider Application for the Gang Resistance Education and Awareness Training (GREAT) Grant</p>	<p>The Police Department requests approval from the City Council authorizing them to apply for a grant to that has the potential to make \$208,000 available to the GREAT program.</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Harding to approve application for this grant.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen        Yes Councilor Harding    Yes Councilor Sherwood   Yes Councilor Wilson     Yes</p>



Agenda Item	Discussion & Comments	Action Items (follow up)
Adjournment	11:24 p.m.	<p>Motion by Councilor Sherwood, seconded by Councilor Harding , to adjourn the meeting.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen      Yes  Councilor Harding    Yes  Councilor Sherwood   Yes  Councilor Wilson      Yes</p>

\_\_\_\_\_  
Catherine Wheatley, City Recorder

Attest:

\_\_\_\_\_  
Mayor, City of Tigard

Date: \_\_\_\_\_

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AGENDA ITEM # 3.2  
FOR AGENDA OF Feb 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE: Urban Services Intergovernmental Agreement (IGA) for Commuter Rail (Revision)

PREPARED BY: Phil Nachbar DEPT HEAD OK PC CITY MGR OK cl

ISSUE BEFORE THE COUNCIL

Review and approve the First Amendment to the current Intergovernmental Agreement among the Commuter Rail participants, Washington County, Wilsonville, Tigard, Tualatin and Beaverton. The Amendment replaces the previous IGA entered into among the parties on or about December 24, 2002.

STAFF RECOMMENDATION

Approve and sign the Intergovernmental Agreement First Amendment between the cities of Tigard, Wilsonville, Tualatin, Beaverton, and Washington County.

INFORMATION SUMMARY

The existing IGA among parties to the Commuter Rail Project has been revised by TriMet to extend the term of the agreement from December 24, 2002 to December 31, 2008, and to add a section regarding the relocation of utilities to the agreement. TriMet has indicated that this is required as a condition of their funding agreement with the federal government for the Commuter Rail project. Section IV "Relocation of Utilities" essentially requires the Cities to relocate their own utilities or cause the relocation of private utilities where it is required by the project. The City, by this agreement, will not incur any cost associated with utility relocations, and all expenses related to the relocation of utilities are the sole responsibility of TriMet. TriMet has requested action on this amendment prior to March 1, 2006 to meet Federal deadlines.

Attached for Council review is a draft of the Intergovernmental Agreement—First Amendment. Staff is finalizing the language and obtaining legal review of the document, but does not anticipate any substantive changes to the content of the agreement. A final version will be transmitted to Council no later than Friday February 24<sup>th</sup>.

OTHER ALTERNATIVES CONSIDERED

None

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Council Goal: Implement Downtown Plan

Vision Goal: Traffic and Transportation; Alternative modes of Transportation will be available and use shall be maximized.

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ATTACHMENT LIST

Attachment 1: Urban Services Intergovernmental Agreement, First Amendment

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FISCAL NOTES

There is no cost impact associated with approval and signing of this Intergovernmental Agreement.

**URBAN SERVICES INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF TIGARD, THE CITY OF TUALATIN, THE CITY OF BEAVERTON,  
THE CITY OF WILSONVILLE AND WASHINGTON COUNTY, OREGON**

**FIRST AMENDMENT**

THIS First Amendment to the URBAN SERVICES INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into as of the last date shown on the signature pages, and is between the City of Tigard, the City of Tualatin, the City of Beaverton, the City of Wilsonville (the "Cities") and Washington County, Oregon ("County"), (collectively, the "Parties"), all political subdivisions of the State of Oregon. As of the effective date, this First Amendment shall supersede and replace the Urban Services Intergovernmental Agreement entered into by and between the Parties on or about December 24, 2002.

**RECITALS**

1. ORS 190.007 provides for the furthering of economy and efficiency in local government by intergovernmental cooperation.
2. The Parties desire to enter into this Agreement for the purpose of allowing better coordination and design consistency between the Cities and the County in response to the design of station areas for the Washington County - Wilsonville to Beaverton Commuter Rail Project ("Project").
3. The Project is defined in the Washington County Commuter Rail Preliminary Engineering documents prepared by URS Consultants and dated February 2002.
4. The Project includes physical improvements to be located in each of the Cities that will require local land use review and permitting, and relocation of public and private utilities. The Project will be more specifically defined during the final engineering and design phase.
5. Cities and County coordinated during the preliminary engineering and design phase of the Project to reach a consensus on the fundamental design features of the physical improvements of the Project. This consensus represents a common understanding between the Cities and County of the Project improvements to be constructed in the Cities and any potential impacts associated with the Project.
6. The Parties have unanimously endorsed the Wilsonville to Beaverton Commuter Rail Project based on the anticipated benefits to the transportation system and support the final design and engineering efforts that will lead to construction of the Project. The Wilsonville to Beaverton Commuter Rail Project is recognized and included in the Transportation System Plan of each City.
7. It would be to the benefit of the Cities and the County to coordinate planning and permit review for the development of the Project to insure that the Project provides similar station area improvements in each of the Cities based on a consistent set of Project design expectations.

8. It would be to the benefit of the Project to coordinate planning and permit review for the development of the Project to insure that extraordinary expenses do not result from the local review process that could impact the financial feasibility of the Project.

9. It would be to the benefit of the Project to coordinate the relocation of public and private utilities necessary for the construction of the Project to insure that extraordinary expenses do not result from such required utility relocations.

The Cities Of Tualatin, Tigard, Beaverton, Wilsonville, and Washington County agree as follows:

## AGREEMENT

### AREA AFFECTED BY THIS AGREEMENT

1. The area affected by this Agreement is the Project property subject to local land use review and permitting by the Cities that is generally described as the Commuter Rail station areas, including station platforms, park-and-ride lots, operating base and related facilities, as well as right-of-way subject to the jurisdiction of the Cities within which utility relocations will be required for the Project. This property will be further defined as a result of the final engineering and design effort for the Project.

### II. PROJECT DEVELOPMENT PRINCIPLES

- a. Insofar as practical, Cities shall be treated equally in terms of type and design of station area Project improvements within each of the Cities' jurisdictional boundaries. Station area Project improvements shall be consistent with a common set of design guidelines (as shown in Exhibit A) for station areas established by the Project. Project improvements may recognize design variations included in local design guidelines or standards. However, any incremental cost attributable to physical improvements or modifications that is greater than the cost in the design guidelines (Exhibit A), or as agreed to through the process set forth in III c. will be the financial responsibility of the permitting City.
- b. A Memorandum of Understanding ("MOU") between the Commuter Rail Project Manager and the City designee will be prepared outlining the details for costs, construction, roles and responsibilities for station area and any off-site improvements. This MOU will be prepared and agreed to prior to filing a formal land use application with the applicable City.
- c. Efforts shall be made through coordination between the Cities and County to protect the Project from extraordinary expenses resulting from local land use reviews and approvals that may impact the financial feasibility of the Project.

### III. DEVELOPMENT PROCESS

- a. County or its designee will be the applicant for all necessary land use applications for submittal to each City. The applicant shall pay all required application fees or as otherwise agreed.
- b. Land use applications submitted to each of the Cities will reflect the Project improvements based on the common understanding of the station area Project design and impacts shown in Exhibit A and including any variations or enhancements agreed to by the City and the Project. A Pre-Application Conference will be held with the particular permitting City prior to application submittal to review the Project design and formalize this common understanding of Commuter Rail facility design within each City. The Pre-Application Conference will also identify permit requirements and an estimated schedule for review of land use applications. During the local project review process, the City in which the application is being processed will assign a staff liaison to the Commuter Rail Project who will act as the primary point of contact between that City and the permit applicant.
- c. During City's review of land use applications, design issues and/or impacts that extend beyond the Station Area Project Design Guidelines shall be immediately brought to the attention of the County or its designee. County or its designee and City shall meet to evaluate the effects of the City-initiated design changes on the design and financial feasibility of the Project. If design changes can be made that are consistent with the design guidelines of Exhibit A and the Project Development Principles (Section II) of this Agreement, such changes shall be incorporated into the Project design and land use application.
- d. If a determination of consistency with the Exhibit A cannot be reached, the provisions of the Dispute Resolution section (Section V) of this Agreement shall be followed.

#### IV. RELOCATION OF UTILITIES

- a. The Cities, at the Project's expense unless otherwise apportioned in this Agreement, shall relocate in-kind, cause to be relocated in-kind, or assist in the relocation in-kind of all of their respective City-owned conduits, lines, poles, mains, pipes, and other utilities and facilities, whether located within the public right-of-way or not, as required by the Project. The Parties understand that relocation in-kind does not include betterment(s) of the existing facilities. The relocation plans and specifications shall include all relocations necessary to conform facilities to the Project. The Cities shall endeavor to conduct this relocation work in accordance with the Projects' construction schedule.
- b. The Cities shall use their best efforts to cause relocation of privately owned utilities without cost to the Cities, the County or the Project. The Cities shall cause the owners of privately owned utility conduits, lines, poles, mains, pipes and other facilities in or on City rights-of-way and/or property to relocate their facilities at the expense of said privately owned utility as necessary to conform to the Project, to the extent the Cities have the power to do so. The Cities shall endeavor to cause this relocation work to be accomplished in accordance with Project's construction schedule. However, if any City

does not have the legal authority or power to cause such relocation, the Project Manager, without cost to such City, shall effect relocation of existing privately owned utility facilities as necessary to conform utilities or facilities to the plans for the Project

- c. The Cities and Project Manager shall participate in review of utility relocation plans submitted by private utilities for the alignment area. The Cities shall also allow the Project Manager's engineers or inspectors or consulting engineers or inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities in order to determine whether they have been relocated in accordance with the plans of the Project.

## V. DISPUTE RESOLUTION

In case of a dispute over the provisions of this Agreement, the one or more Cities and County staff for each entity will immediately refer the dispute to the respective City Manager or Mayor and the County Administrator for resolution. If the City Manager or Mayor and the County Administrator cannot resolve the dispute within 30 days, it shall be forwarded to the Commuter Rail Steering Committee for resolution (the Commuter Rail Steering Committee is composed of elected representatives from the four cities, Washington County and the TriMet General Manager). If the Commuter Rail Steering Committee is unable to resolve the dispute within 30 days, the dispute shall be subject to binding arbitration under ORS 190.710-190.800 except that the Parties can each select an arbitrator and those arbitrators shall select a third arbitrator. The third arbitrator shall hear the matter. Any decision resulting from this dispute resolution process shall not be a land use decision but may be incorporated into a final land-use decision by the City. The cost of the arbitrator shall be borne equally by the Parties to the dispute. Each party shall be solely responsible for its cost of legal representation, if any.

## VI. NOTICE OF APPLICATIONS

Cities shall give notice to County or its designee of all claims, land use applications, hearings, decisions and any appeals of those decisions made under the authority of this Agreement. County or its designee shall forward to other signatories to this Agreement copies of all claims, land use applications, hearings, decisions and any appeals of those decisions made under authority of this Agreement.

## VII. TERM OF AGREEMENT

The term of this Agreement shall be from December 24, 2002 through December 31, 2008. This Agreement may be extended for a subsequent two (2) year term upon mutual written agreement of the Parties. This Agreement may be terminated by any party upon ninety (90) days written notice to the other parties.

## VIII. COMPLIANCE WITH LAWS

Each party shall comply with all applicable federal, state and local ordinances, statutes, and regulations that are applicable to the services provided under this Agreement

**IX. DEBT LIMITATION**

This Agreement is expressly subject to the debt limitation of Oregon Counties as set forth in Article XI, Section 10 of the Oregon Constitution and is contingent upon funds being appropriated therefor.

**X. HOLD HARMLESS**

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.

**XI. ASSIGNMENT**

Each of the Parties understand that the County shall have the right to assign this Agreement without the Cities' consent to an entity that designs, constructs, and/or operates passenger rail service in this corridor.

**XII. MODIFICATION**

Modifications to this Agreement are valid only if made in writing and signed by all Parties. This writing is intended as the final expression of the agreement between the Parties with respect to the terms and as a complete and exclusive statement of the terms of the Agreement.

In WITNESS THEREOF, the Parties have executed this Intergovernmental Agreement on the dates set below their signatures.

**WASHINGTON COUNTY, OREGON**

**CITY OF TUALATIN, OREGON**

By: \_\_\_\_\_  
Tom Brian, Chair  
Washington County  
Board of Commissioners

By: \_\_\_\_\_  
Lou Ogden, Mayor  
City of Tualatin

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
City Attorney



**CITY OF BEAVERTON, OREGON**

By: \_\_\_\_\_  
Rob Drake, Mayor  
City of Beaverton

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

**CITY OF TIGARD, OREGON**

By: \_\_\_\_\_  
Craig Dirksen, Mayor  
City of Tigard

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

**CITY OF WILSONVILLE, OREGON**

By: \_\_\_\_\_  
Charlotte Lehan, Mayor  
City of Wilsonville

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

Agenda Item No.: 3.3  
Meeting of: February 28, 2006

There are no materials at this time for the

CONSIDERATION OF THE  
INTERGOVERNMENTAL AGREEMENT –  
ORGANIZATION AND FUNCTION OF THE  
TUALATIN BASIN NATURAL RESOURCE  
COORDINATING COMMITTEE

Packet Materials will be forwarded to the City Council in the February 24, 2006, City Council  
Newsletter

For more information, contact the City Recorder's Office at  
503-639-4171.

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE: Vacation of an un-named public right-of-way east of SW 74<sup>th</sup> Avenue and east of the S P & S Railroad right-of-way, north of Durham Road (VAC2005-00003).

PREPARED BY: Dick Bewersdorff DEPT HEAD OK TC CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

Should the City Council vacate an approximately 7,845 square foot portion of un-named public right-of-way lying east of SW 74<sup>th</sup> Avenue and east of the S P & S Railroad right-of-way which adjoins tax lots 2S112DC-01200 and 2S112DC-01300. These parcels are owned by the petitioners and are legally and graphically described within attachments "A-1 and A-2" and "B-1 and B-2".

STAFF RECOMMENDATION

It is recommended that the City Council adopt the attached ordinance vacating approximately 7,845 square feet of un-named public right-of-way lying east of SW 74<sup>th</sup> Avenue and east of the S P & S Railroad right-of-way. At the public hearing, or after due consideration, the Council may by ordinance approve, approve with conditions, or deny the vacation request.

INFORMATION SUMMARY

The applicants, Larusso Concrete Company, Inc. and Richard Akerman & James Wathey, requested that the City Council initiate vacation proceedings on November 15, 2005 (**Attachment 2**). On December 20, 2005, the City Council voted to initiate the vacation hearing process (**Attachment 3**). The next step in the process is for the City Council to hold a public hearing.

The applicants are requesting the vacation of an approximate 7,845 square foot portion of an un-used portion of public road right-of-way located east of SW 74<sup>th</sup> Avenue and east of the S P & S Railroad right-of-way, north of SW Durham Road. The right-of-way has never been used for road purposes and is not needed for ingress or egress to adjoining properties. Utility companies and emergency service providers have given no objections. Adjacent property owners were notified and they have not objected. In 1998, the City Council approved a related and adjacent right-of-way vacation (**Attachment 4**).

OTHER ALTERNATIVES CONSIDERED

No action.

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Not applicable.

ATTACHMENT LIST

- Attachment 1 – Proposed Ordinance vacating the requested right-of-way including legal descriptions and maps.
- Attachment 2 – Applicant's request and Vicinity Map.
- Attachment 3 – Resolution No. 05-73 initiating the vacation hearing process.
- Attachment 4 – Ordinance 98-01 and associated maps from the adjacent vacation to the south.

FISCAL NOTES

The applicant has paid the required deposit fee.

CITY OF TIGARD, OREGON

ORDINANCE NO. 06-

AN ORDINANCE VACATING AN APPROXIMATELY 7,845 SQUARE FOOT PORTION OF AN UN-NAMED PUBLIC RIGHT-OF-WAY WHICH LIES TO THE EAST OF SW 74<sup>TH</sup> AVENUE AND EAST OF THE S P & S RAILROAD RIGHT-OF-WAY, NORTH OF SW DURHAM ROAD, IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2005-00003).

---

WHEREAS, the Tigard City Council initiated this vacation request pursuant to Section 15.08.040 of the Tigard Municipal Code on December 20, 2005, and has been recommended by the Community Development Department; and

WHEREAS, the approximate 7,845 square feet of unnamed right-of-way to be vacated has never been used for public or private road purposes and is not required for ingress or egress to or from adjoining properties; and

WHEREAS, the applicants have requested that the City of Tigard vacate an un-named public right-of-way approximately 7,845 square feet in area and described in exhibits "A-1 and A-2" and "B-1 and B-2"; and

WHEREAS, the City will no longer have maintenance responsibility for this area; and

WHEREAS, all affected service providers, including utility companies and emergency service providers, have reviewed the vacation proposal and have provided no objections; and

WHEREAS, notice has been mailed to all property owners abutting said vacation area and all owners in the affected area, as described by ORS 271.080; and

WHEREAS, in accordance with Tigard Municipal Code 15.08.120, notice of the public hearing was posted in the area to be vacated and published in the newspaper; and

WHEREAS, the property owners of the majority of the area affected have not objected in writing; and

WHEREAS, the City Council having considered the request on February 28, 2006, finds that it is in the public interest to approve the request to vacate said public right-of-way as the public interest will not be prejudiced by this vacation, as provided by ORS 271.120 and TMC Section 15.08.130; and

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Tigard City Council hereby orders the vacation of said 7,845 square foot portion of public right-of-way as shown and described in the attached **Exhibits "A-1, A-2, B-1 and B-2"** (legal descriptions and map of the area to be vacated), and by this reference, made part thereof.

SECTION 2: This ordinance shall be effective upon the recording of a certified copy of the ordinance by the city recorder.

PASSED: By \_\_\_\_\_ vote of all Council members present after being read by number and title only, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Craig Dirksen, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

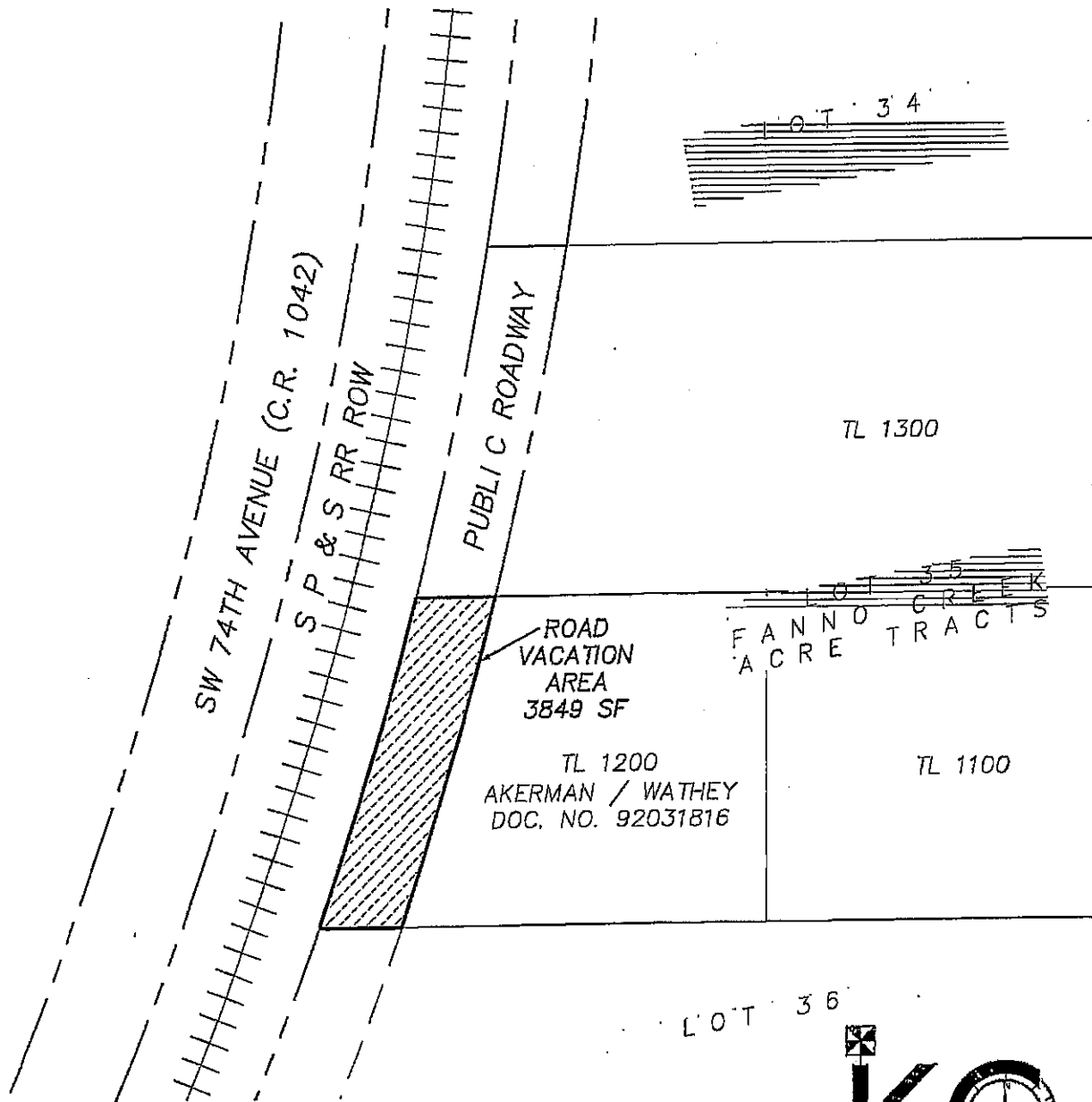
\_\_\_\_\_  
Date

EXHIBIT A-1

# ROAD VACATION SKETCH

LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SECTION 12,  
TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.  
CITY OF TIGARD, COUNTY OF WASHINGTON, STATE OF OREGON

OCTOBER 25TH, 2005



2407 NE 292nd Avenue,  
Camas, WA 98607  
360.834.2519  
Fax.834.5498



PROVIDING SURVEYING AND PLANNING SERVICES WITH A PERSONAL COMMITMENT TO EXCELLENCE.

EXHIBIT A-2

2407 NE 292<sup>nd</sup> Avenue  
Camas, WA 98607  
360.834.2519  
fax.834.5498  
c.halcumb@verizon.net

Legal Description  
30-foot Wide Public Right of Way Vacation  
October 25, 2005

A portion of that 30-foot wide roadway dedicated to the public by Fanno Creek Acre Tracts, a Plat of Record in Book 5, Page 14, Washington County Survey Records, Situated in the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 12, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, being more particularly described as follows:

All of said 30-foot wide roadway lying West of Lot 35, Fanno Creek Acre Tracts, lying East of the S P & S Railroad 50-foot wide Right of Way, lying North of the Westerly Extension of the South line of said Lot 35, and lying South of the Westerly extension of the North line of that Tract of Land described in deed to Richard D. Akerman and James E. Wathey, recorded in Document Number 92031816, Washington County Deed Records.

Containing 3,849 Square Feet.

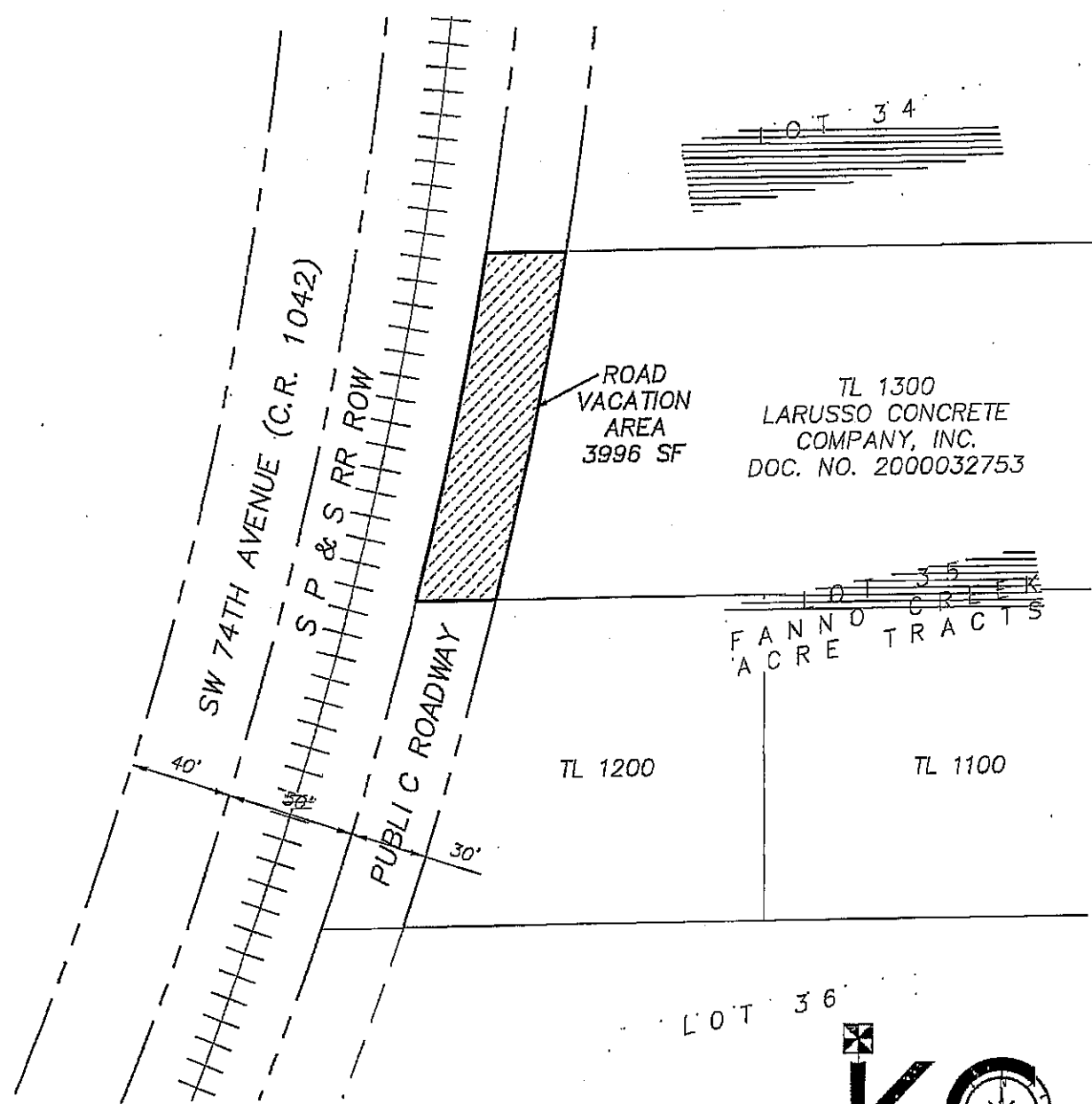
# EXHIBIT B-1



## ROAD VACATION SKETCH

LOCATED IN THE SW 1/4 OF THE SE 1/4 OF SECTION 12,  
TOWNSHIP 2 SOUTH, RANGE 1 WEST, W.M.  
CITY OF TIGARD, COUNTY OF WASHINGTON, STATE OF OREGON

OCTOBER 25TH, 2005



TL 1300  
LARUSSO CONCRETE  
COMPANY, INC.  
DOC. NO. 2000032753

LOT 35  
FANNO CREEK  
TRACTS

TL 1200

TL 1100

LOT 36



2407 NE 292nd Avenue  
Camas, WA 98607  
360.834.2519  
Fax.834.5498





*PROVIDING SURVEYING AND PLANNING SERVICES WITH A PERSONAL COMMITMENT TO EXCELLENCE.*

---

EXHIBIT B-2

2407 NE 292<sup>nd</sup> Avenue  
Camas, WA 98607  
360.834.2519  
fax.834.5498  
c.halcumb@verizon.net

Legal Description  
30-foot Wide Public Right of Way Vacation  
October 25, 2005

A portion of that 30-foot wide roadway dedicated to the public by Fanno Creek Acre Tracts, a Plat of Record in Book 5, Page 14, Washington County Survey Records, Situated in the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 12, Township 2 South, Range 1 West, Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, being more particularly described as follows:

All of said 30-foot wide roadway lying West of Lot 35, Fanno Creek Acre Tracts, lying East of the S P & S Railroad 50-foot wide Right of Way, lying South of the Westerly Extension of the North line of said Lot 35, and lying North of the Westerly extension of the South line of that Tract of Land described in deed to Larusso Concrete Company, Inc., recorded in Document Number 2000032753, Washington County Deed Records.

Containing 3,996 Square Feet.



Design Group  
a Parati company

November 15, 2005

Dick Bewersdorff, Planning Manager  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, Oregon 97223

RE: Right-of-way vacation

Dear Mr. Bewersdorff:

On behalf of Mr. Akerman, Mr. Wathey and Mr. LaRusso, I am requesting that the City initiate the vacation a 30-foot wide strip of right-of-way along the east side of SW 74th Street, east of the Spokane Portland & Seattle (SP&S) railroad tracks, also known as the Oregon Electric Railway. This area was dedicated to the public in 1911 with the platting of "Fanno Creek Acre Tracks". The right-of-way is not currently used for any public purpose, and it is unlikely that there would be any public interest in the property in the future. It is apparently part of the SW 74<sup>th</sup> Street right-of-way, but it is unusable for street purposes because of the railroad tracks. Moreover, the area is landlocked. The only public access to it eliminated when the City vacated the SW Fanno Creek Place right-of-way in 1998.

The City Council initiated a related right-of-way vacation eight years ago, on November 25, 1997, adjacent to tax lots 300, 500 and 700, 2S 1 13AB. The Council initiated that vacation via Resolution No. 97-48, adopted on November 25, 1997, and vacated the right-of-way via Ordinance No. 98-01, adopted on January 27<sup>th</sup>, 1998. That vacation included the SW Fanno Creek Place right-of-way, as well as the 30-foot wide right-of-way adjacent to tax lot 300 and the railroad tracks. I am enclosing documents related to that previous vacation request.

This vacation request is for the next portion of the right-of-way to the north, adjacent to tax lots 1200 and 1300, 2S 1 12DC. We are making two separate requests, one for the right-of-way adjacent to tax lot 1200, owned by Akerman/Wathey, and another for the right-of-way adjacent to tax lot 1300, owned by LaRusso Concrete Company.

This request is being made in conjunction with the zone change application from I-L to I-P submitted on November 1, 2005. The zoning map change, if approved, would therefore need to take this right-of-way vacation into consideration to make sure that there will not be a left-over strip of land zoned I-L.

The vacation of the right-of-way will increase the area of tax lots 1200 and 1300 by 3849 square feet and 3996 square feet, respectively. Including these small areas in the developable area of tax lots 1200 and 1300 will make a significant difference in the site planning for these parcels. It will also bring this square footage back on the property tax rolls, and clarify who is responsible for maintenance.

20085 NWTanasbourne Drive  
Hillsboro, OR 97124  
P 503.858.4242  
F 503.645.5500  
E hillsboro@ldcdesign.com  
www.ldcdesign.com

Hillsboro, OR  
Tillamook, OR  
Vancouver, WA  
Bellevue, WA  
Coeur d'Alene, ID  
Rocklin, CA  
Clement, CA

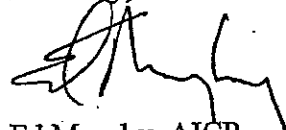
Based on utility maps received from the City staff, there are no existing or planned public or private water, sewer or storm water utilities within the areas to be vacated. If upon further investigation it turns out that there are existing utilities within this area, the City Council may require the property owners to establish a public and private utility easement within the area to be vacated, as it did with the 1998 vacation. (In that case, however, there was an existing 8" public water main in SW Fanno Creek Place.)

With this application, I am submitting:

- ◆ A check in the amount of \$2080, which is a deposit for the application fee;
- ◆ One copy of a title report showing ownership;
- ◆ Documents related to the 1998 vacation;
- ◆ Legal descriptions of each area to be vacated;
- ◆ Maps showing each area to be vacated;
- ◆ An aerial photograph of the site;
- ◆ Tax Assessor's maps showing the site.

I trust that you and the engineering staff will agree that there is no public interest now and none anticipated in the future for this right-of-way, and that it would be appropriate to initiate proceedings for the requested vacation. Would you please schedule this request before the City Council at the earliest opportunity? If you need anything else in order to place this request before the Council (such as a draft Resolution), please let me know.

Sincerely,

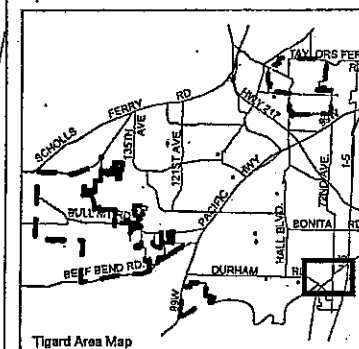
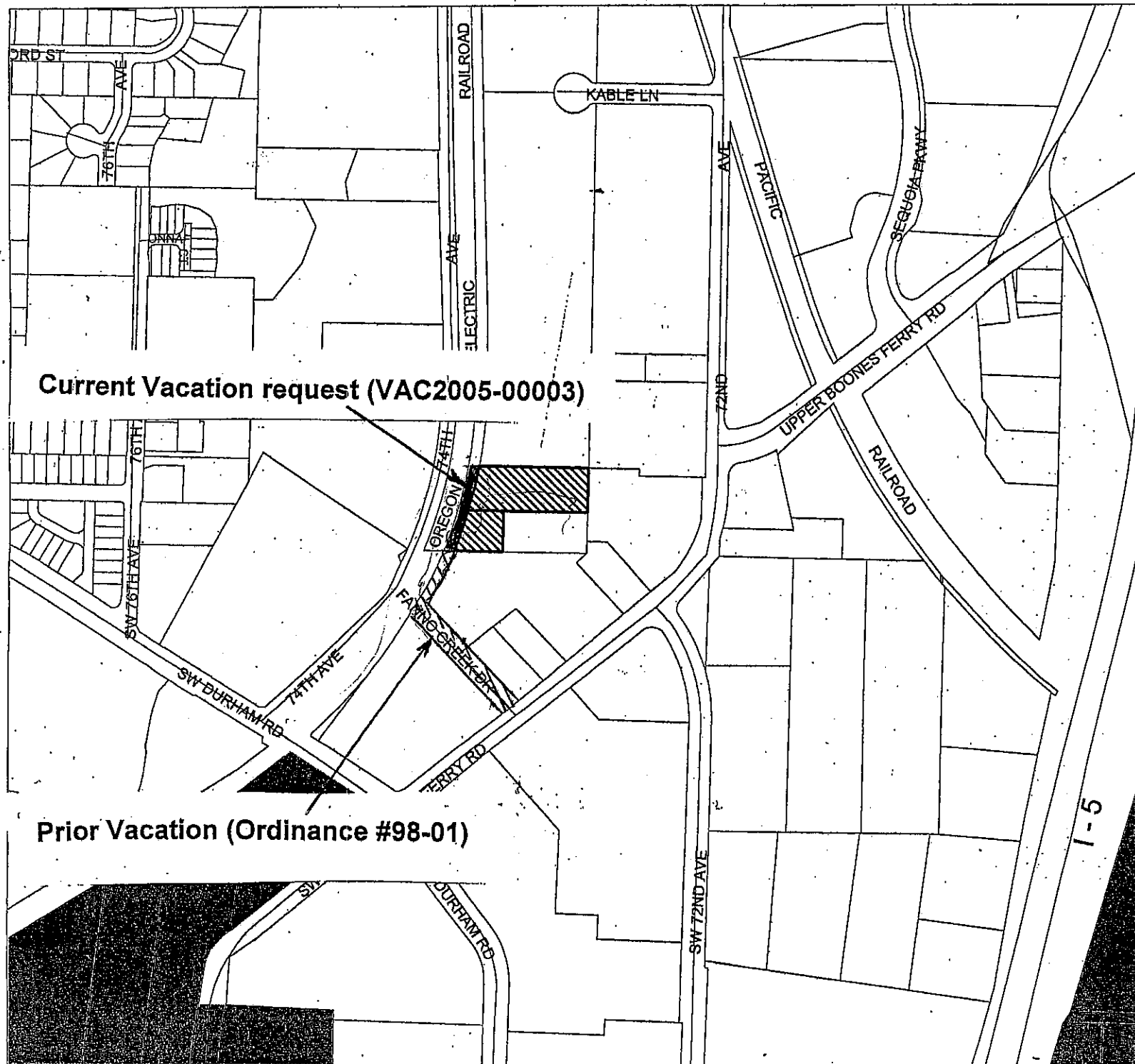


Ed Murphy, AICP

cc. Richard Akerman  
LaRusso Concrete Company, Inc.  
Kevin VandenBrink – Macadam Forbes, Inc.  
Cindy Halcumb, PLS, KC Development

## VICINITY MAP

## Attachment 2



0 200 400 600 Feet  
1" = 400 feet



Information on this map is for general location only and should be verified with the Development Services Division.  
13125 SW Hall Blvd  
Tigard, OR 97223  
(503) 639-4171  
<http://www.ci.tigard.or.us>

## CITY OF TIGARD, OREGON

## RESOLUTION NO. 05-73

A RESOLUTION SETTING THE DATE OF A PUBLIC HEARING REGARDING THE VACATION OF AN APPROXIMATELY 7,845 SQUARE FOOT PORTION OF AN UNNAMED PUBLIC RIGHT OF WAY WHICH LIES TO THE EAST OF SW 74<sup>TH</sup> AVENUE APPROXIMATELY 680 FEET NORTH OF DURHAM ROAD

WHEREAS, the applicant has requested the City of Tigard initiate Vacation proceedings to vacate an approximately 7,845 square foot portion of right-of-way which had previously been dedicated to the public; and

WHEREAS, the Tigard City Council finds it appropriate to initiate Vacation proceedings for the requested public right-of-way vacation.

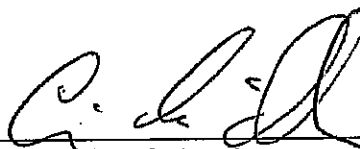
NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council hereby initiates a request for the vacation of an approximately 7,845 square foot portion of public right-of-way and more particularly described and shown in Exhibits "A-1 and A-2" and "B-1 and B-2 " and by reference made a part hereof.

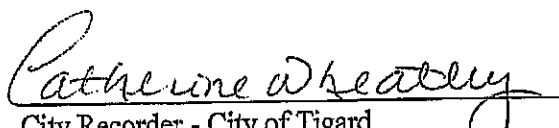
SECTION 2: A public hearing is hereby called to be held by the City Council on February 28, 2006 at 7:30 PM in the Town Hall at Tigard City Hall, 13125 SW Hall Boulevard, within the City of Tigard, at which time and place the Council will hear any objections thereto and any interested person may appear and be heard for or against the proposed vacation of said public right-of-way.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 20<sup>th</sup> day of December 2005.

  
\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

  
\_\_\_\_\_  
City Recorder - City of Tigard

60  
165-  
RETURN RECORDED DOCUMENT TO:  
CITY RECORDS SECTION,  
CITY OF TIGARD  
13125 SW Hall Blvd.  
Tigard, OR 97223

## CITY OF TIGARD, OREGON

## ORDINANCE NO. 98-01

AN ORDINANCE CONCERNING THE VACATION OF: 1) APPROXIMATELY 16,174 SQUARE FEET OF PUBLIC RIGHT-OF-WAY COMMONLY KNOWN AS SW FANNO CREEK PLACE; AND 2) APPROXIMATELY 4,914 SQUARE FEET OF PUBLIC RIGHT-OF-WAY ADJACENT TO THE WESTERLY LINE OF LOT 36 OF "FANNO CREEK ACRE TRACTS".

WHEREAS, the Tigard City Council initiated this vacation (Resolution No. 97-48) request pursuant to Section 15.08.040 of the Tigard Municipal Code at a public hearing held on November 25, 1997; and

WHEREAS, the right-of-way was previously dedicated to the public; and

WHEREAS, the approximately 4,914 square foot road had been dedicated with the platting of "Fanno Creek Acre Tracts" in 1911; and

WHEREAS, SW Fanno Creek Place is an unimproved roadway that provides secondary access to Elmo Studd's and Northwest Landscape Industries; and

WHEREAS, the approximately 4,914 square feet of public right-of-way adjacent to the westerly line of lot 36 of "Fanno Creek Acre Tracts" is also undeveloped and not used in any way; and

WHEREAS, the petitioner is requesting that the City of Tigard vacate an approximately 16,174 square foot portion of SW Fanno Creek Place; and

WHEREAS, the petitioner is requesting that the City of Tigard vacate an approximately 4,914 square foot portion of an unnamed roadway adjacent to lot 36 of "Fanno Creek Acre Tracts"; and,

WHEREAS, the public right-of-way may no longer be necessary; and

WHEREAS, the vacation was initiated by the City Council and approval has been recommended by the Community Development Department; and

WHEREAS, all affected service providers, including utility companies and emergency service providers, have had the opportunity to review the vacation proposal and have no objections; and

WHEREAS, PGE states that they will need easements for any facilities presently in this right-of-way to be vacated; and

WHEREAS, GTE Telephone Operations has existing facilities that provide service to 15930 SW 74th Avenue that will require the granting of a utility easement; and

WHEREAS, Unified Sewerage Agency states that there is an existing 8 inch sanitary sewer line within the proposed vacation area which will require the granting of a public utility easement; and

APR 21 1999

WHEREAS, the 30-foot right-of-way is part of a .65 mile (3,460 lineal foot) length right-of-way that is contiguous to 10 parcels; ; and

WHEREAS, the 30-foot right-of-way extends for an additional .62 miles (3,290 lineal feet) beyond the area to be vacated and is contiguous to 9 parcels; and

WHEREAS, in 1979 a street vacation had been approved (Ordinance No. 79-63) for an approximately .14 mile (770 lineal foot) segment of this 30-foot right-of-way; and

WHEREAS, that street vacation (Ordinance No.79-63) was later overturned (Ordinance No.79-115) because of notification and access issues ; and

WHEREAS, the access issues associated with that 1979 vacation are no longer applicable; and

WHEREAS, all of those parcels have had approved Site Development Reviews; and

WHEREAS, access standards were satisfied for all of the approved Site Development Review approvals (SDR 88-08) (SDR 88-09), (SDR 90-0009), (SDR 90-0010) without use of the right-of-way; and

WHEREAS, Pacific Realty Associates received site development review approval (SDR 88-08) that stated that the need for the right-of-way to be used for access appears to be highly unlikely, it is not maintained, it is a potential eyesore and it would be in the City's interest to have this area maintained in conjunction with the proposed development; and

WHEREAS, Pacific Realty Associates received site development review approval (SDR 88-09) that stated that a variance was granted to allow less than the minimum landscape percentage if an arrangement can be made to use the vacant right-of-way such that the total land area would provide for the minimum landscape requirement; and

WHEREAS, the City entered into an agreement with Pacific Realty Associates to lease the right-of-way to allow landscaping and other uses within a .2 mile (1,100 lineal foot) length of the right-of-way that is contiguous to 2 parcels; and

WHEREAS, notice has been mailed to all property owners abutting said vacation area and all owners in the affected area, as required by ORS 271.080; and

WHEREAS, in accordance with Tigard Municipal Code 15.08.120, the City Recorder posted notice in the area to be vacated and published notice of the public hearing; and

WHEREAS, the property owners of the majority of the area affected have not objected in writing; and

WHEREAS, the City Council having considered the request on January 27, 1998, finds that it is in the public interest to approve the request to vacate said public right-of-way as the public interest will not be prejudiced by this vacation, as provided be ORS 271.120 and TMC Section 15.08.130; and

21  
WHEREAS, the Council finds that the following condition is necessary to vacate said land:

1. A public and private utility easement shall be provided within the area to be vacated.

**NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:**

**SECTION 1:** The Tigard City Council hereby orders the vacation of: 1) approximately 16,174 square feet of public right-of-way commonly known as SW Fanno Creek Place; and 2) approximately 4,914 square feet of public right-of-way adjacent to the westerly line of lot 36 of "Fanno Creek Acre Tracts", as more particularly described in Exhibit "B" and Exhibit "C".

**SECTION 2:** The Tigard City Council further orders that the vacation be subject to the following conditions:

1. A public and private utility easement shall be provided within the area to be vacated.

**SECTION 3:** This ordinance shall be effective 30 days after its passage by the Council, approval by the Mayor, and posting by the City Recorder.

**PASSED:** By UNANIMOUS vote of all Council members present after being read by number and title only, this 27<sup>th</sup> day of January, 1998.

Catherine Wheatley  
Catherine Wheatley, City Recorder

**APPROVED:** By Tigard City Council this 27<sup>th</sup> day of January, 1998.

James Nicoli  
James Nicoli, Mayor

Approved as to form:

James H. V. R...  
City Attorney

1/27/98  
Date

Certified to be a True Copy of  
Original on file at Tigard City Hall

By: Catherine Wheatley  
City Recorder - City of Tigard  
Date: 3/26/98



STATE OF OREGON

County of Washington

88

I, Jerry R. Hanson, Director of Assessment and Taxation, and Esch County Clerk for said county, do hereby certify that the within instrument of writing was received and recorded in book of records of said county.



Jerry R. Hanson, Director of  
Assessment and Taxation, Esch  
County Clerk

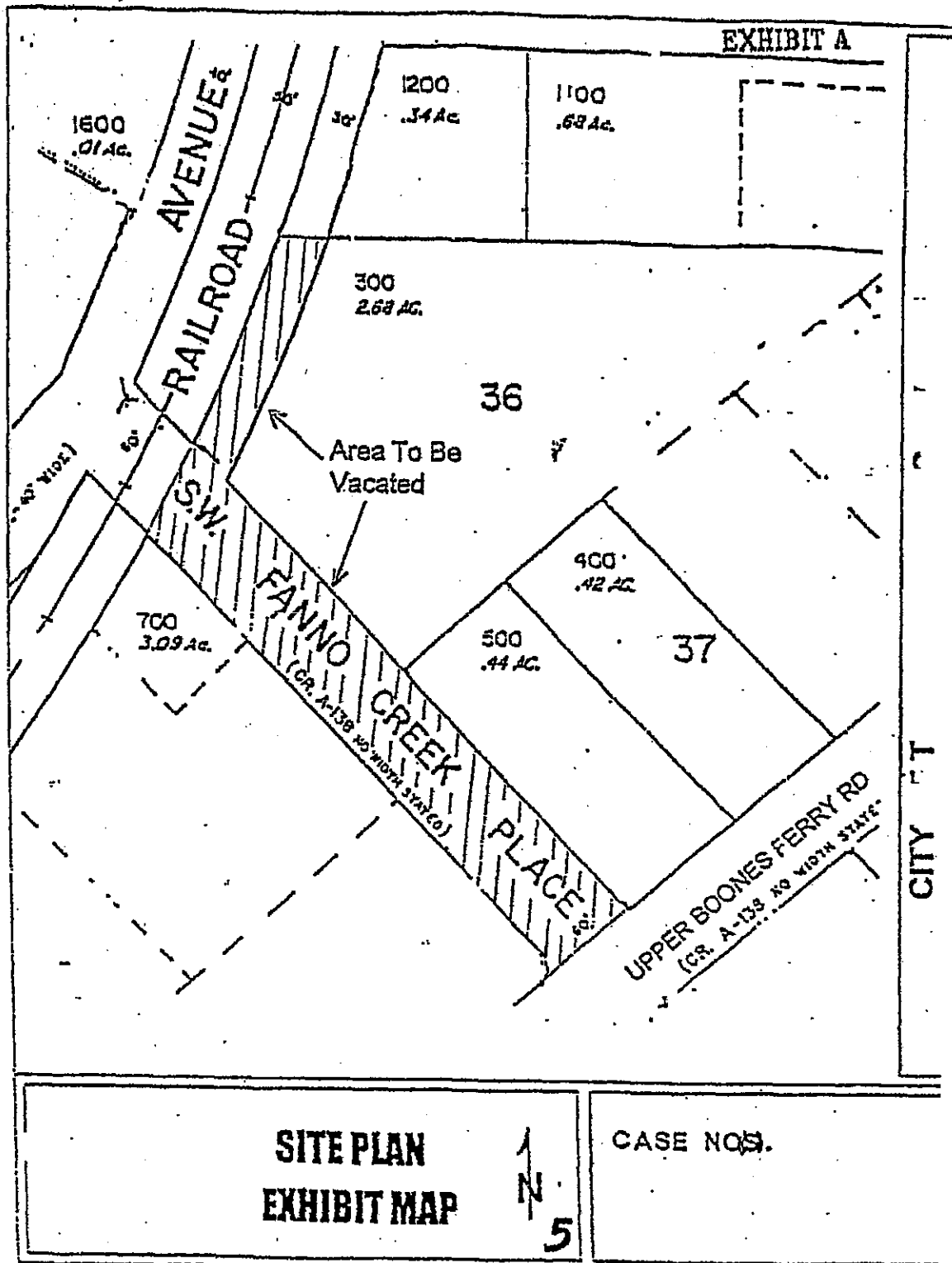
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04/21/1999 02:25:56pm

APR 21 1993



AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Vacation of five small portions of public right-of-way totaling 3,392 square feet along 68<sup>th</sup> Parkway and 69<sup>th</sup> Avenue (VAC2005-00004 & VAC2005-00005).

PREPARED BY: Dick Bewersdorff DEPT HEAD OK TC CITY MGR OK ck

ISSUE BEFORE THE COUNCIL

Should the City Council vacate five portions of public right-of-way adjacent to 68<sup>th</sup> Parkway and 69<sup>th</sup> Avenue as requested by the applicant to facilitate development of eleven parcels between the two streets?

STAFF RECOMMENDATION

It is recommended that the City Council approve the vacation of public right-of-way by adopting the attached ordinance. At the public hearing, and after due consideration, the Council may by ordinance approve, approve with conditions, or deny the vacation request.

INFORMATION SUMMARY

Specht Development, Inc. has requested the right-of-way vacations shown on the vicinity map (**Attachment 2**). The company intends to assemble eleven parcels of land north of Dartmouth Street between 68<sup>th</sup> Parkway and 69<sup>th</sup> Avenue for development purposes. In addition to the vacation of five small parcels totaling approximately 3,392 square feet, the company also proposed dedication of approximately 304 square feet of property in three places (**Attachment 4**). The attached ordinance is conditioned to require the acceptance of the City Engineer of the dedications prior to the proposed vacations becoming effective (**Attachment 1**). Based on the applicant's request, the City Council voted to initiate the vacation process at its meeting January 10, 2006 (**Attachment 3**). The next step in the process is for the City Council to hold a public hearing. Based on the outcome of the hearing, the Council may approve the ordinance, approve it with conditions or deny the request.

OTHER ALTERNATIVES CONSIDERED

No action.

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Not applicable.

ATTACHMENT LIST

- Attachment 1 - Proposed Ordinance vacating the requested right-of-way including legal descriptions and maps (applicant's exhibits A-1, B-1/A-2, B-2/A-3, B-3/A-4, B-4/A-5, B-5).
- Attachment 2 - Applicant's request and Vicinity Map.
- Attachment 3 - Resolution No. 06-02 initiating the vacation hearing process.
- Attachment 4 - Proposed right-of-way dedications (applicant's exhibits C-1, D-1/C-2, D-2/C-3, D-3).

FISCAL NOTES

The applicant has paid the required deposit fee.

CITY OF TIGARD, OREGON

ORDINANCE NO. 06-\_\_\_\_\_

AN ORDINANCE VACATING FIVE SMALL PORTIONS OF PUBLIC RIGHT-OF-WAY TOTALING 3,392 SQUARE FEET ALONG 68<sup>TH</sup> PARKWAY AND 69<sup>TH</sup> AVENUE IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2005-00004 & VAC2005-00005).

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WHEREAS, the Tigard City Council initiated this vacation request pursuant to Section 15.08.040 of the Tigard Municipal Code on January 10, 2006, and has been recommended by the Community Development Department; and

WHEREAS, Specht Development has requested that the City of Tigard vacate the above right-of-way of 3,392 square feet in area as described in exhibits A-1 through A-5 and B-1 through B-5, as well as to accept dedication of three portions of right-of-way as described in exhibits C-1 through C-3 and D-1 through D-3 to allow for the assemblage of eleven parcels of land north of SW Dartmouth Street between 68<sup>th</sup> Parkway and 69<sup>th</sup> Avenue for development purposes; and

WHEREAS, all affected service providers, including utility companies and emergency service providers, have reviewed the vacation proposal and have provided no objections; and

WHEREAS, notice has been mailed to all property owners abutting said vacation area and all owners in the affected area as described by ORS 271.080; and

WHEREAS, in accordance with Tigard Municipal Code 15.08.120, notice of the public hearing was posted in the area to be vacated and published in the newspaper; and

WHEREAS, the property owners of the majority of the area affected have not objected in writing; and

WHEREAS, the City Council having considered the request on February 28, 2006, finds that it is in the public interest to approve the request to vacate said public right-of-way as the public interest will not be prejudiced by this vacation, as provided by ORS 271.120 and TMC 15.08.130.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Tigard City Council hereby orders the vacation of said 3,392 square feet of public right-of-way as shown and described in the attached Exhibits A-1 through A-5 and B-1 through B-5 (legal descriptions and maps of the area to be vacated) and by this reference, made part thereof.

SECTION 2: Said vacation is hereby conditioned and the ordinance will not be effective until the acceptance of right-of-way dedication as described in Exhibits C-1 through C-3 and D-1 through D-3 by the City Engineer, and upon recording of a certified copy of the ordinance by the City Recorder.

PASSED: By \_\_\_\_\_ vote of all Council members present after being read by number and title only, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Craig Dirksen, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

**EXHIBIT A - 1**

Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 68<sup>TH</sup> PARKWAY  
RIGHT OF WAY VACATION  
TAX LOT # 3001, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Jack B. Root and Wilma L. Root, recorded under Document Number 2004-123997, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the southerly end of a 25.00 foot radius curve between the right of way lines for S.W. 68<sup>th</sup> Parkway and S.W. Clinton Street at the southeasterly corner of said Jack B. Root and Wilma L. Root parcel, said point being on the northerly right of way line S.W. Clinton Street and being marked by a 5/8" iron rod with a yellow plastic cap stamped "Northwest Surveying, LLC";

Thence along said 25.00 foot radius curve, being tangent with said northerly right of way line, to the left, and having a delta angle of 87°45'18", a long chord bearing North 46°06'27" East 34.66 feet, and a length of 38.29 feet to a 5/8" iron rod with a yellow plastic cap stamped "Northwest Surveying, LLC";

Thence along the westerly right of way line of said S.W. 68<sup>th</sup> Parkway, North 02°13'48" East 83.65 feet to a point measuring 35.00 feet at right angles to the centerline of said S.W. 68<sup>th</sup> Parkway;

Thence southerly parallel with the centerline of said S.W. 68<sup>th</sup> Parkway, South 00°03'44" East 82.58 to a tangent curve;

Thence along said curve to the right having a radius of 25.00 feet, a delta angle of 90°02'49", a long chord bearing South 44°57'41" West 35.37 feet and a length of 39.29 feet;

Thence South 89°59'06" West 3.33 feet to the point of beginning.

The above described tract contains 220 square feet, more or less.

The basis of bearings for this description is between found monuments along the northerly right of way line of said S.W. Clinton Street, per survey number 30,016, on record with the Washington County Surveyor's Office.

# EXHIBIT B-1

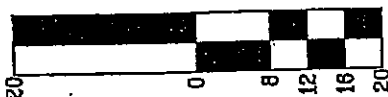
EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY VACATION  
FOR TAX LOT 3001 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 8, 2005  
PAGE 1 OF 1

■ FOUND 5/8" IRON ROD WITH  
YELLOW PLASTIC CAP STAMPED  
"NORTHWEST SURVEYING, LLC",  
PER SURVEY NUMBER 30,016

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	39.29'	25.00'	90°02'49"	35.37'	S44°57'41"W
C2	38.29'	25.00'	87°45'18"	34.66'	N46°06'27"E
C3	10.59'	25.00'	24°15'56"	10.51'	N14°21'46"E
C4	27.70'	25.00'	63°29'21"	26.31'	N58°14'25"E



SCALE 1" = 20 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/06

TAX LOT 3001.  
DOC# 2004-123997  
RIGHT-OF-WAY VACATION  
AREA = ±220 SQUARE FEET

POINT OF  
BEGINNING

BASIS OF BEARINGS  
PER SURVEY # 30,016

N89°59'06"E 166.36'  
S.W. CLINTON STREET

C3  
L=10.59'  
L=38.29'  
C2  
L=39.29'  
C1  
L=27.70'  
C4  
L=27.70'  
S89°59'06"W 3.33'

S02°13'43"W 67.51'  
EASEMENT PER DOC# 81040508

91'89" M. 24.52.50N

N02°13'48"E 83.65'

S00°03'44"E 82.58'

35.00'

35.00'

S.W. 68TH PARKWAY

N00°03'44"W

PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

NORTHWEST  
SURVEYING, LLC

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: nwsurveying@verizon.net

**EXHIBIT A - 2**

Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**

PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 68<sup>TH</sup> PARKWAY AND S.W. CLINTON STREET  
RIGHT OF WAY VACATION  
TAX LOT # 6100, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Robert S. Hogg and Harriett L. Hogg, recorded under Book 303, Page 341, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the southeast corner of said Robert S. Hogg and Harriett L. Hogg parcel, said point being on the westerly right of way line S.W. 68<sup>th</sup> Parkway, from said point a 5/8" iron rod with a no cap bears South 89°48'48" West 0.05 feet;  
Thence along said westerly right of way line, North 00°03'44" West 75.32 feet to the beginning of a tangent curve;  
Thence along a curve to the left having a radius of 25.00 feet, a delta angle of 89°57'11", a long chord bearing North 45°02'19" West 35.34 feet, and a length of 39.25 feet to the southerly right of way line of S.W. Clinton Street;  
Thence parallel with the centerline of said S.W. Clinton Street, North 89°59'06" East 5.00 feet to a tangent curve;  
Thence along said curve to the right having a radius of 25.00 feet, a delta angle of 89°57'11", a long chord bearing South 45°02'19" East 35.34 feet, and a length of 39.25 feet to a point 35.00 feet measured at right angles to the centerline of said S.W. 68<sup>th</sup> Parkway;  
Thence parallel with said centerline, South 00°03'44" East 75.31 feet to the easterly extension of the south line of said Robert S. Hogg and Harriett L. Hogg parcel;  
Thence along said easterly extension South 89°48'48" West 5.00 feet to the point of beginning.

The above described tract contains 501 square feet, more or less.

The basis of bearings for this description is between found monuments along the southerly line of said Robert S. Hogg and Harriett L. Hogg parcel, per survey number 30,016, on record with the Washington County Surveyor's Office.

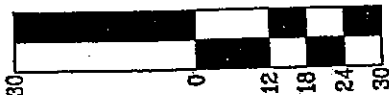


# EXHIBIT B-2

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY VACATION  
FOR TAX LOT 6100 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 15, 2005  
PAGE 1 OF 1



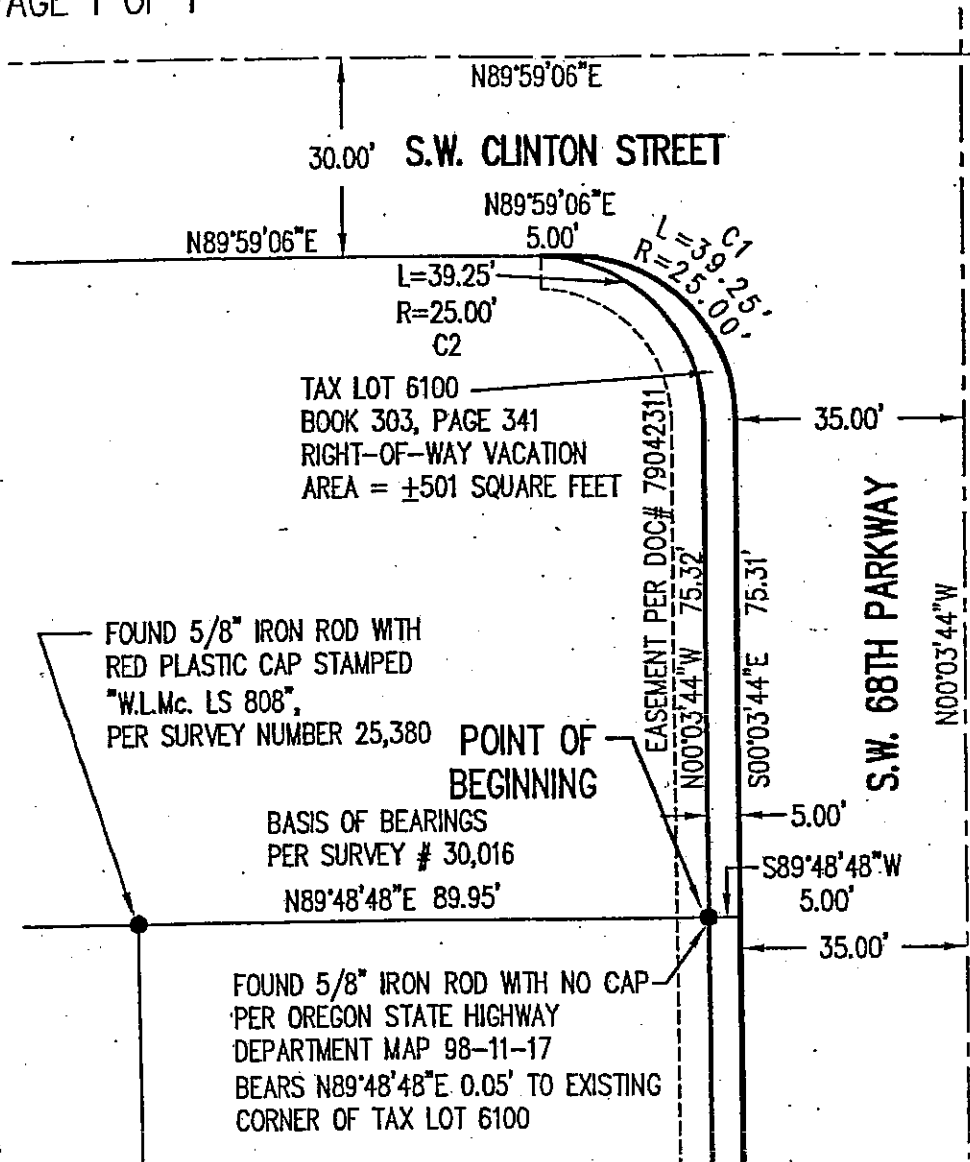
SCALE 1" = 30 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/06



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	39.25'	25.00'	89°57'11"	35.34'	S45°02'19"E
C2	39.25'	25.00'	89°57'11"	35.34'	N45°02'19"W

PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST**  
**SURVEYING, LLC**

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179

EMAIL: nwsurveying@verizon.net

EXHIBIT A-3

Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 68<sup>TH</sup> PARKWAY  
RIGHT OF WAY VACATION  
TAX LOT # 6700 AND 6800, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Gordon C. Root, Jack B. Root and Wilma L. Root, recorded under Document Number 99-002709, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the northeast corner of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel, said point being on the westerly right of way line S.W. 68<sup>th</sup> Parkway, from said point a 5/8" iron rod with a no cap bears South 89°48'48" West 0.05 feet;  
Thence along the easterly extension of the northerly line of said parcel, North 89°48'48" East 5.00 feet to a point 35.00 feet measured at right angles from the centerline of said S.W. 68<sup>th</sup> Parkway;  
Thence parallel with said centerline, South 00°03'44" East 101.71 feet to the easterly extension of the south line of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel;  
Thence along said easterly extension North 89°59'58" West 5.00 feet to the westerly right of way line of said S.W. 68<sup>th</sup> Parkway;  
Thence along said westerly right of way line North 00°03'44" West 101.69 feet to the point of beginning.

The above described tract contains 508 square feet, more or less.

The basis of bearings for this description is between found monuments along the northerly line of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel, per survey number 30,016, on record with the Washington County Surveyor's Office.

# EXHIBIT B-3

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
A 5.00 FOOT WIDE RIGHT OF WAY VACATION  
FOR TAX LOT 6700 AND 6800 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 15, 2005

PAGE 1 OF 1



SCALE 1" = 30 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/06

FOUND 5/8" IRON ROD WITH  
RED PLASTIC CAP STAMPED  
"W.L.Mc. LS 808",  
PER SURVEY NUMBER 25,380

POINT OF  
BEGINNING

BASIS OF BEARINGS  
PER SURVEY # 30,016

N89°48'48"E 89.95'

FOUND 5/8" IRON ROD WITH NO CAP  
PER OREGON STATE HIGHWAY  
DEPARTMENT MAP 98-11-17  
BEARS N89°48'48"E 0.05' TO EXISTING  
CORNER OF TAX LOT 6100

TAX LOT 6700 & 6800  
DOC # 99002709  
RIGHT-OF-WAY VACATION  
AREA = ±508 SQUARE FEET

S89°59'58"E

N89°48'48"E  
5.00'

35.00'

40.00'

5.00'

EASEMENT PER DOC# 80006507  
N00°03'44"W 101.69'

S00°03'44"E 101.71'

S.W. 68TH PARKWAY

N00°03'44"W

N89°59'58"W  
5.00'

35.00'

## CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	39.25'	25.00'	89°57'11"	35.34'	S45°02'19"E
C2	39.25'	25.00'	89°57'11"	35.34'	N45°02'19"W

PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST**  
**SURVEYING, LLC**

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: nwsurveying@verizon.net

**EXHIBIT A - 4**

Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 68<sup>TH</sup> PARKWAY  
RIGHT OF WAY VACATION  
TAX LOT # 6600, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Gordon C. Root, Jack B. Root and Wilma L. Root, recorded under Document Number 98-056127, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the northeast corner of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel, said point being on the westerly right of way line S.W. 68<sup>th</sup> Parkway, and being marked by a 5/8" iron rod with a no cap;  
Thence along the easterly extension of the northerly line of said parcel, South 89°59'58"  
East 5.00 feet to a point 35.00 feet measured at right angles from the centerline of said S.W. 68<sup>th</sup> Parkway;  
Thence parallel with said centerline, South 00°03'44" East 71.45 feet to a tangent curve;  
Thence along said curve to the right having a radius of 25.00 feet, a delta angle of 36°52'12"; a long chord bearing South 18°22'22" West 15.81 feet, and a length of 16.09 feet to the westerly right of way line of said S.W. 68<sup>th</sup> Parkway;  
Thence along said westerly right of way line North 00°03'44" West 86.46 feet to the point of beginning.

The above described tract contains 408 square feet, more or less.

The basis of bearings for this description is between found monuments along the northerly line of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel, per survey number 30,016, on record with the Washington County Surveyor's Office.

# EXHIBIT B-4

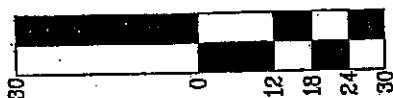
EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY VACATION  
FOR TAX LOT 6600 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON

AUGUST 15, 2005

PAGE 1 OF 1



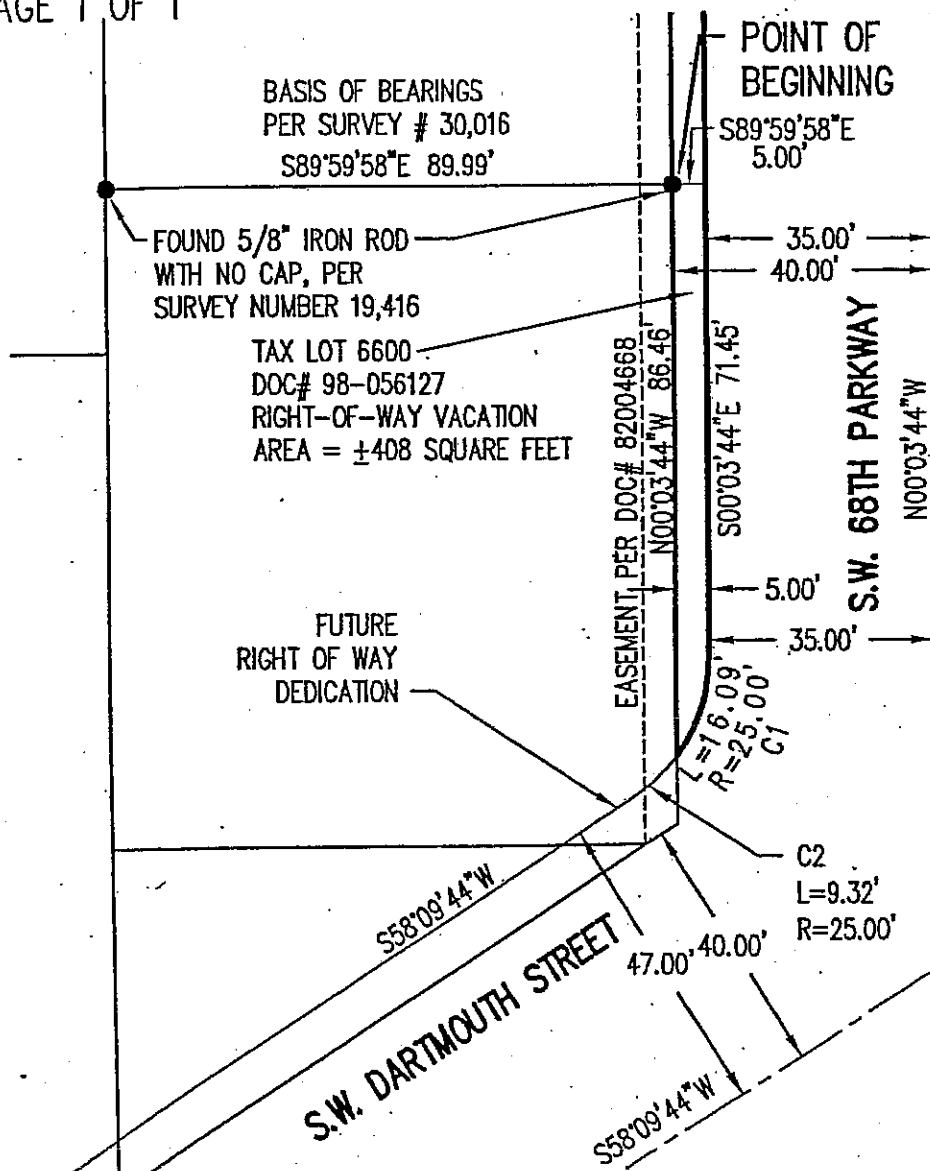
SCALE 1" = 30 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/06



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	16.09'	25.00'	36°52'12"	15.81'	S18°22'22"W
C2	9.32'	25.00'	21°21'15"	9.26'	N47°29'06"E

PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST**  
**SURVEYING, LLC**

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: nwsurveying@verizon.net

**EXHIBIT A -5**

Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. DARTMOUTH STREET AND S.W. 69<sup>TH</sup> AVENUE  
RIGHT OF WAY VACATION  
TAX LOT # 6300, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Gordon C. Root, Jack B. Root and Wilma L. Root, recorded under Document Number 98-056127, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the southwest corner of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel, said point being on the easterly right of way line S.W. 69<sup>th</sup> Avenue, and being marked by a 5/8" iron rod with a no cap;

Thence along the southerly line of said parcel, North 89°50'20" East 90.92 feet to a point 47.00 feet measured at right angles from the centerline of said S.W. Dartmouth Street;

Thence along a curve to the right, being a 47.00 foot offset from the centerline of said S.W. Dartmouth Street and having a radius of 393.47 feet, a delta angle of 9°13'26"; a long chord bearing South 63°11'42" West 63.28 feet, and a length of 63.34 feet to a tangent curve;

Thence along said curve to the right having a radius of 25.00 feet, a delta angle of 112°09'42"; a long chord bearing North 56°06'44" West 41.49 feet, and a length of 48.94 feet to a point 30.00 feet measured at right angles to the centerline of S.W. 69<sup>th</sup> Avenue; Thence parallel with said centerline of S.W. 69<sup>th</sup> Avenue, North 00°01'53" West 5.14 feet to the point of beginning.

The above described tract contains 1,755 square feet, more or less.

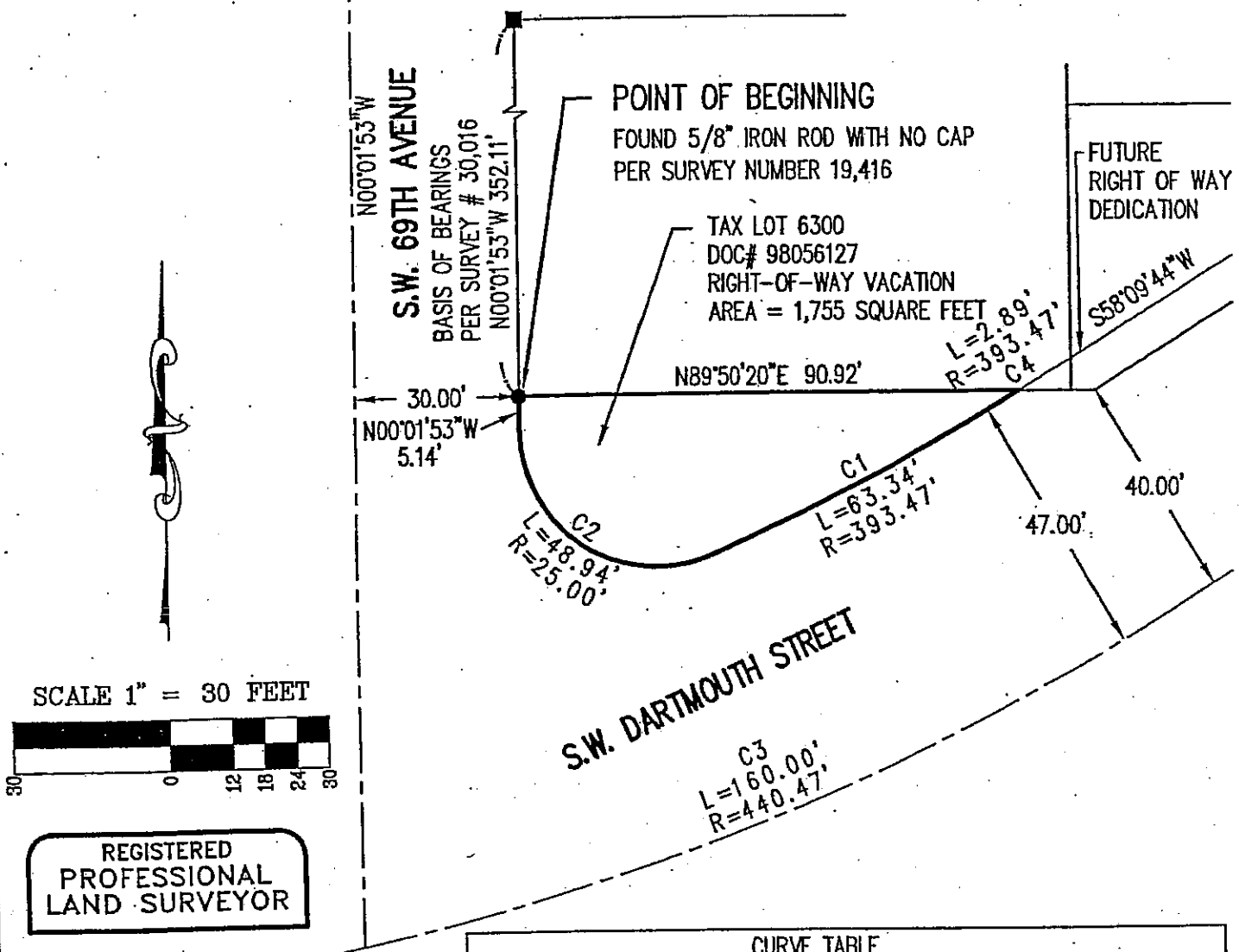
The basis of bearings for this description is between found monuments along the easterly right of way line of said S.W. 69<sup>th</sup> Avenue, per survey number 30,016, on record with the Washington County Surveyor's Office.

# EXHIBIT B-5

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY VACATION  
FOR TAX LOT 6600 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 15, 2005

PAGE 1 OF 1

■ FOUND 5/8" IRON ROD WITH  
YELLOW PLASTIC CAP STAMPED  
"NORTHWEST SURVEYING, LLC",  
PER SURVEY NUMBER 30,016



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	63.34'	393.47'	9°13'26"	63.28'	S63°11'42"W
C2	48.94'	25.00'	112°09'42"	41.49'	N56°06'44"W
C3	160.00'	440.47'	20°48'48"	159.13'	N68°34'07"E
C4	2.89'	393.47'	0°25'15"	2.89'	N58°22'21"E

PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST**  
**SURVEYING, LLC**

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: nwsurveying@verizon.net



SPECHT PROPERTIES  
SPECHT DEVELOPMENT

September 9, 2005

15400 S.W. Millikan Way • Beaverton OR 97006  
503/646-2202 Fax 503/626-8903  
www.spechtprop.com

City Council  
City of Tigard  
13125 SW Hall Blvd  
Tigard, OR 97223

**Via: Delivery**

**Re: Request for Council to Initiate Vacation Proceedings**

Dear City Council Members:

Specht Development, Inc. (or an affiliated entity) intends to assemble eleven parcels of land North of Dartmouth and between 68<sup>th</sup> and 69<sup>th</sup> street for the development of an office building. Specht intends to submit a Site Plan Application within six months. Based on the July 22, 2005 pre-application meeting with City Staff, we understand that certain portions of the parcels must be dedicated and certain portions of Right of Way must be vacated to meet the City's Comprehensive Plan. In order to make the future Site Plan Application as accurate as possible, Specht would like to have all the dedication/vacations completed prior to application.

**Specht respectfully requests that the City accept the following dedications of Right of Way:**

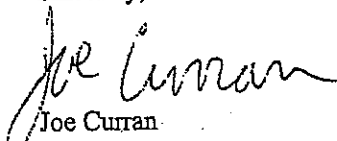
1. Tax Lot # 3001 Map 1S136DD +-36 SF West side of 68<sup>th</sup> Parkway North of Clinton Street,
2. Tax Lot # 3100 Map 1S136DD +-134 SF on the NE corner of 68<sup>th</sup> & Clinton Streets,
3. Tax Lot # 6100 Map 1S136DD +-134 SF on the SE corner of 68<sup>th</sup> & Clinton Streets.

**Specht respectfully requests that the City initiate the following vacations of Right of Way:**

1. Tax Lot # 3001 Map 1S136DD +-220 SF West side of 68<sup>th</sup> Parkway North of Clinton Street,
2. Tax Lot # 6100 Map 1S136DD +-501 SF West side of 68<sup>th</sup> Parkway South of Clinton Street,
3. Tax Lot # 6700 & 6800 Map 1S136DD +-508 SF West side of 68<sup>th</sup> Parkway South of Clinton Street,
4. Tax Lot # 6600 Map 1S136DD +-408 SF West side of 68<sup>th</sup> Parkway North of Dartmouth Street,
5. Tax Lot # 6300 Map 1S136DD +-1755 SF on the NE corner of 68<sup>th</sup> and Dartmouth Streets.

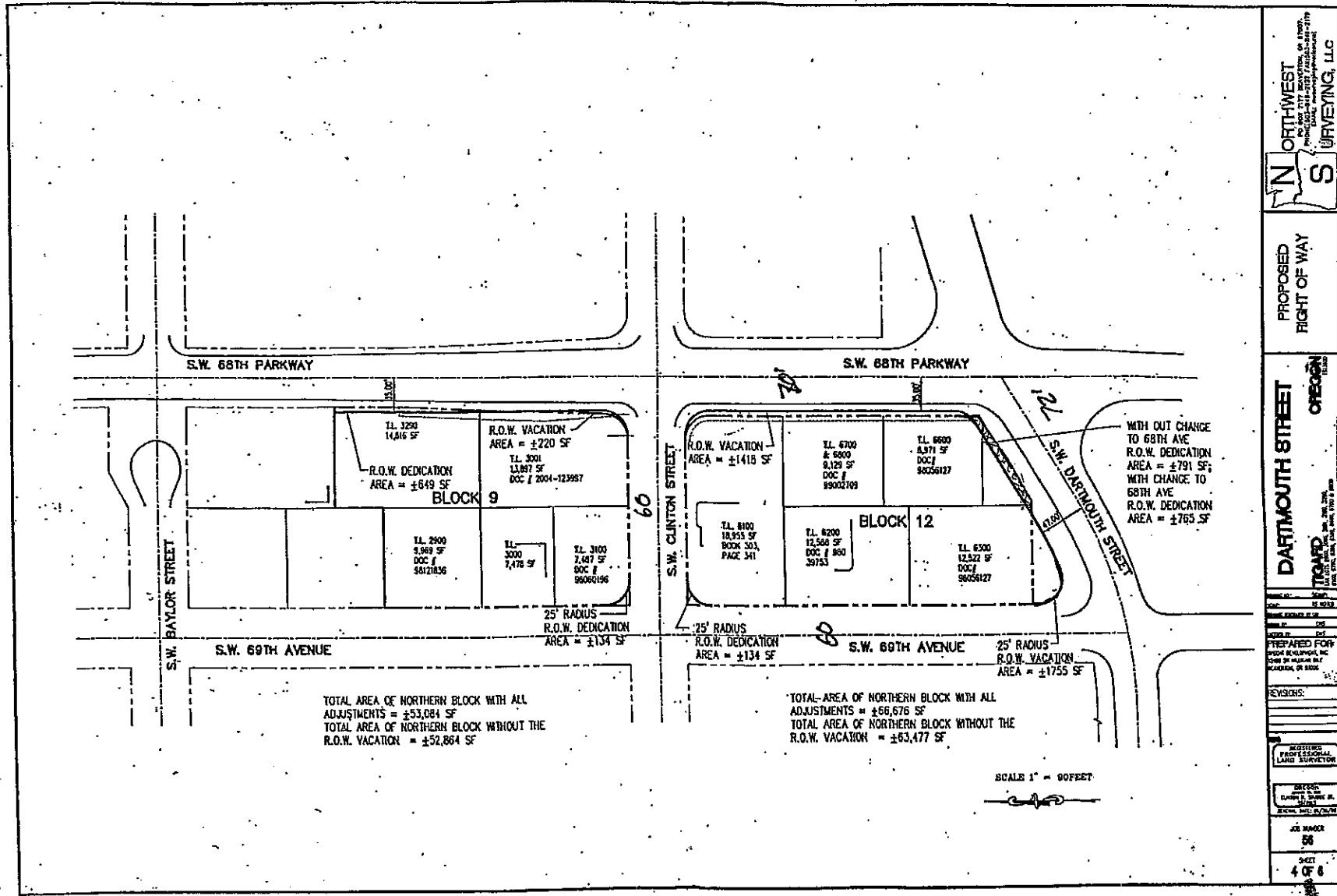
Legal descriptions and maps for each of the above dedications/vacations are enclosed. Thank you for your consideration of this request.

Sincerely,

  
Joe Curran  
Senior Project Manager



# RIGHT OF WAY MAP



**NORTHWEST**

**S**

**PROPOSED RIGHT OF WAY**

**DARTMOUTH STREET**

**RECORD**

**PREPARED FOR:**  
 BUDA DEVELOPMENT, INC.  
 1000 SW 10TH AVE, SUITE 200  
 MIAMI, FL 33135

**REVISIONS:**

**REGISTERED PROFESSIONAL LAND SURVEYOR**

**DATE:**  
 08/01/2004

**JOE HANCOX**  
 58

**SHEET**  
 4 OF 8

## CITY OF TIGARD, OREGON

RESOLUTION NO. 06-02

A RESOLUTION SETTING THE DATE OF A PUBLIC HEARING REGARDING THE VACATION OF FIVE (5) SMALL PORTIONS OF PUBLIC RIGHT-OF-WAY TOTALING 3,392 SQUARE FEET ALONG 68<sup>TH</sup> PARKWAY AND 69<sup>TH</sup> AVENUE WHICH ADJOIN TAX LOTS 1S136DD-03001, 1S136DD-06100, 1S136DD-06300, 1S136DD-06600, AND 1S136DD-06700. THESE PARCELS ARE OWNED BY THE PETITIONERS AND ARE LEGALLY AND GRAPHICALLY DESCRIBED WITHIN EXHIBITS "A-1, B-1/A-2, B-2/A-3, B-3/A-4, B-4/A-5, B-5".

WHEREAS, the applicant, Specht Development, has requested the City of Tigard initiate Vacation proceedings to vacate five (5) small portions of public right-of-way totaling 3,392 square feet along 68<sup>th</sup> Parkway and 69th Avenue as described in the Resolution title above;

WHEREAS, the Tigard City Council finds it appropriate to initiate Vacation proceedings for the requested public right-of-way vacation.


NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council hereby initiates a request for the vacation of five (5) small portions of public right-of-way totaling 3,392 square feet along 68<sup>th</sup> Parkway and 69th Avenue which adjoin tax lots 1S136DD-03001, 1S136DD-06100, 1S136DD-06300, 1S136DD-06600, and 1S136DD-06700. These parcels are owned by the petitioners and are legally and graphically described within exhibits "A-1, B-1/A-2, B-2/A-3, B-3/A-4, B-4/A-5, B-5" and by reference made a part hereof.

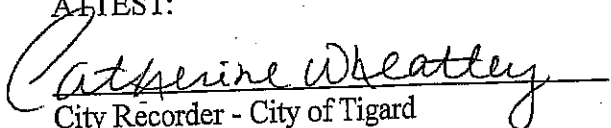
SECTION 2: A public hearing is hereby called to be held by the City Council on February 28, 2006 at 7:30 PM in the Town Hall at Tigard City Hall, 13125 SW Hall Boulevard, within the City of Tigard, at which time and place the Council will hear any objections thereto and any interested person may appear and be heard for or against the proposed vacation of said public right-of-way.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 10<sup>th</sup> day of January 2006.

  
\_\_\_\_\_  
Mayor City of Tigard

ATTEST:

  
\_\_\_\_\_  
Catherine Wheatley  
City Recorder - City of Tigard

RESOLUTION NO. 06 - 02

**EXHIBIT** C-1

Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 69<sup>TH</sup> AVENUE  
RIGHT OF WAY DEDICATION  
TAX LOT # 6100, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Robert S. Hogg and Harriett L. Hogg, recorded under Book 303, Page 341, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the northwest corner of said Robert S. Hogg and Harriett L. Hogg parcel, said point being at the intersection of the easterly right of way line S.W. 69<sup>th</sup> Avenue and the southerly right of way line of S.W. Clinton Street, and being marked by a 5/8" iron rod with a yellow plastic cap stamped "Northwest Surveying, LLC";  
Thence along said southerly right of way line, North 89°59'06" East 25.01 feet;  
Thence leaving said northerly right of way line along a curve with a tangent bearing of South 89°59'06" West to the left and having a radius of 25.00 feet, a delta angle of 90°00'59", a long chord bearing South 44°58'36" West 35.36 feet, and a length of 39.28 feet to said easterly right of way line of S.W. 69<sup>th</sup> Avenue;  
Thence along said easterly right of way line, North 00°01'53" West 25.01 feet to the point of beginning.

The above described tract contains 134 square feet, more or less.

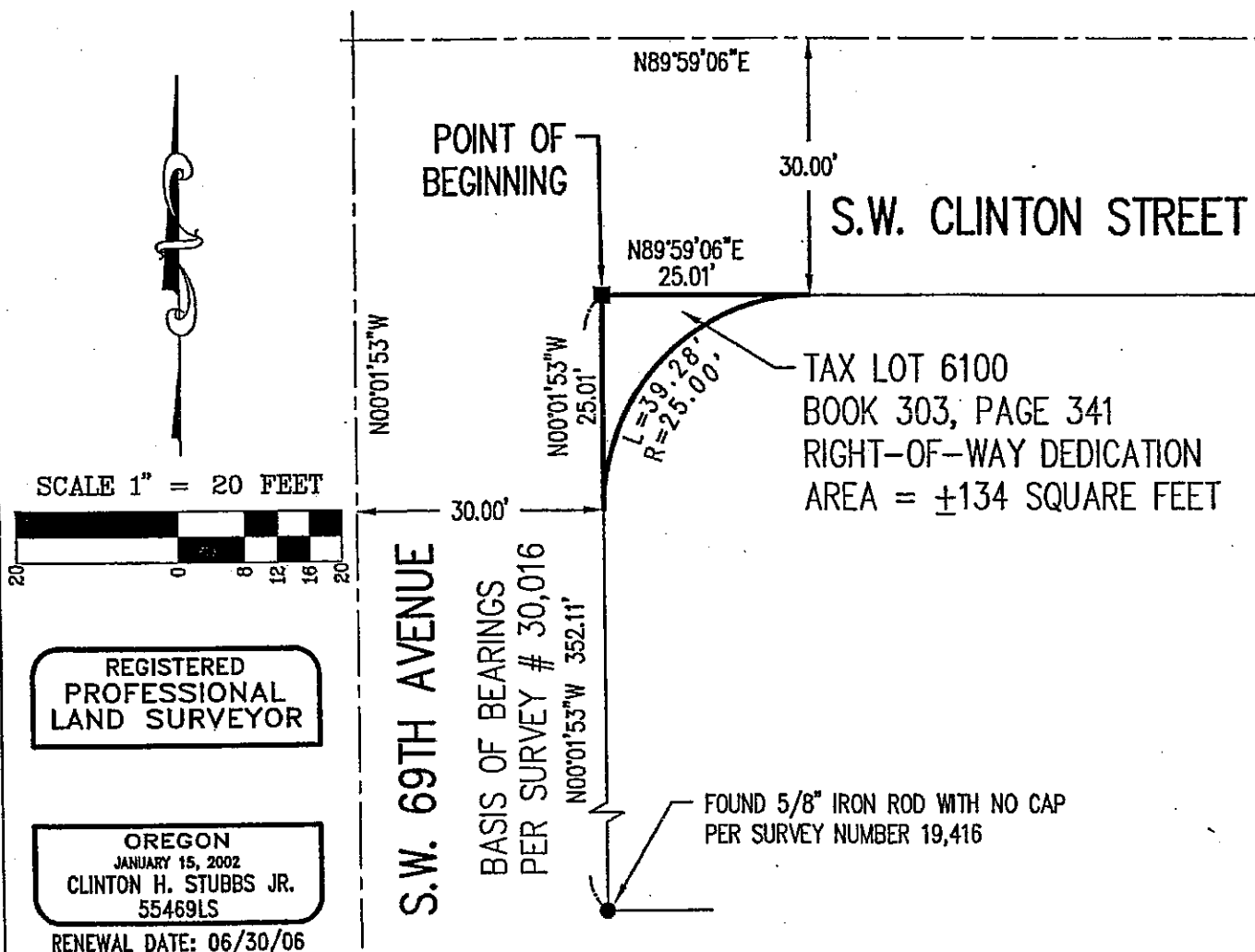
The basis of bearings for this description is between found monuments along the easterly right of way line of S.W. 69<sup>th</sup> Avenue, per survey number 30,016, on record with the Washington County Surveyor's Office.

# EXHIBIT D-1

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY DEDICATION  
FOR TAX LOT 6100 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 15, 2005  
PAGE 1 OF 1

■ FOUND 5/8" IRON ROD WITH  
YELLOW PLASTIC CAP STAMPED  
"NORTHWEST SURVEYING, LLC",  
PER SURVEY NUMBER 30,016

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	39.28'	25.00'	90°00'59"	35.36'	S44°58'36"W



PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST**  
**SURVEYING, LLC**

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: nwsurveying@verizon.net

**EXHIBIT C-2**  
Page 1 of 1

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 68<sup>TH</sup> PARKWAY  
RIGHT OF WAY DEDICATION  
TAX LOT # 3100, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Gordon C. Root, Jack B. Root and Wilma L. Root, recorded under Document Number 98-060196, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the southwest corner of said Gordon C. Root, Jack B. Root and Wilma L. Root parcel, said point being at the intersection of the easterly right of way line S.W. 69<sup>th</sup> Avenue and the northerly right of way line of S.W. Clinton Street, and being marked by a 5/8" iron rod with a yellow plastic cap stamped "Northwest Surveying, LLC";  
Thence along said northerly right of way line, North 89°59'06" East 25.01 feet;  
Thence leaving said northerly right of way line along a curve with a tangent bearing of South 89°59'06" West to the right and having a radius of 25.00 feet, a delta angle of 90°01'34", a long chord bearing North 45°00'07" West 35.36 feet, and a length of 39.28 feet to said easterly right of way line of S.W. 69<sup>th</sup> Avenue;  
Thence along said easterly right of way line, South 00°00'40" West 25.01 feet to the point of beginning.

The above described tract contains 134 square feet, more or less.

The basis of bearings for this description is between found monuments along the northerly right of way line of S.W. Clinton Street, per survey number 30,016, on record with the Washington County Surveyor's Office.

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY DEDICATION  
FOR TAX LOT 3100 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 8, 2005  
PAGE 1 OF 1

■ FOUND 5/8" IRON ROD WITH  
YELLOW PLASTIC CAP STAMPED  
"NORTHWEST SURVEYING, LLC",  
PER SURVEY NUMBER 30,016

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	39.28'	25.00'	90°01'34"	35.36'	N45°00'07"W



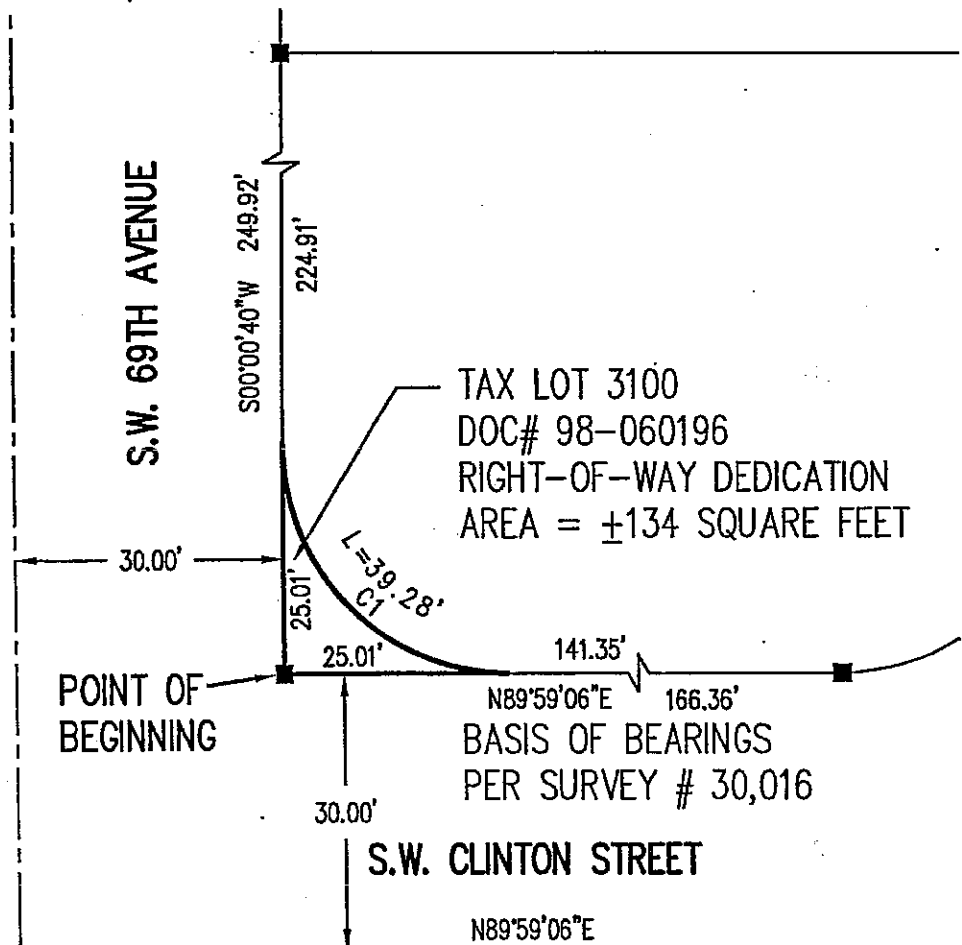
SCALE 1" = 20 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/06



PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST** BEA  
PHO  
FA  
**SURVEYING, LLC** EMAIL:

**T** PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: [nwsurveying@verizon.net](mailto:nwsurveying@verizon.net)

Prepared By:  
**NORTHWEST SURVEYING, LLC**  
PO Box 7177  
Beaverton, OR 97007  
503-848-2127

**LEGAL DESCRIPTION FOR  
S.W. 68<sup>TH</sup> PARKWAY  
RIGHT OF WAY DEDICATION  
TAX LOT # 3001, MAP 1S136DD**

Real Property situated in the City of Tigard, Washington County, Oregon, being a portion of that parcel as described in deed to Jack B. Root and Wilma L. Root, recorded under Document Number 2004-123997, records of said county, lying in the southeast quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, more particularly described as follows:

Beginning at the northeast corner of said Jack B. Root and Wilma L. Root parcel, said point being on the westerly right of way line S.W. 68<sup>th</sup> Parkway and being marked by a 5/8" iron rod with a yellow plastic cap stamped "Northwest Surveying, LLC";  
Thence along said westerly right of way line, South 02°13'48" West 42.37 feet to a point measuring 35.00 feet at right angles to the centerline of said S.W. 68<sup>th</sup> Parkway;  
Thence northerly parallel with the centerline of said S.W. 68<sup>th</sup> Parkway, North 00°03'44" West 42.34 feet to the north line of said Jack B. Root and Wilma L. Root parcel;  
Thence along said north line, North 89°59'06" East 1.70 feet to the point of beginning.

The above described tract contains 36 square feet, more or less.

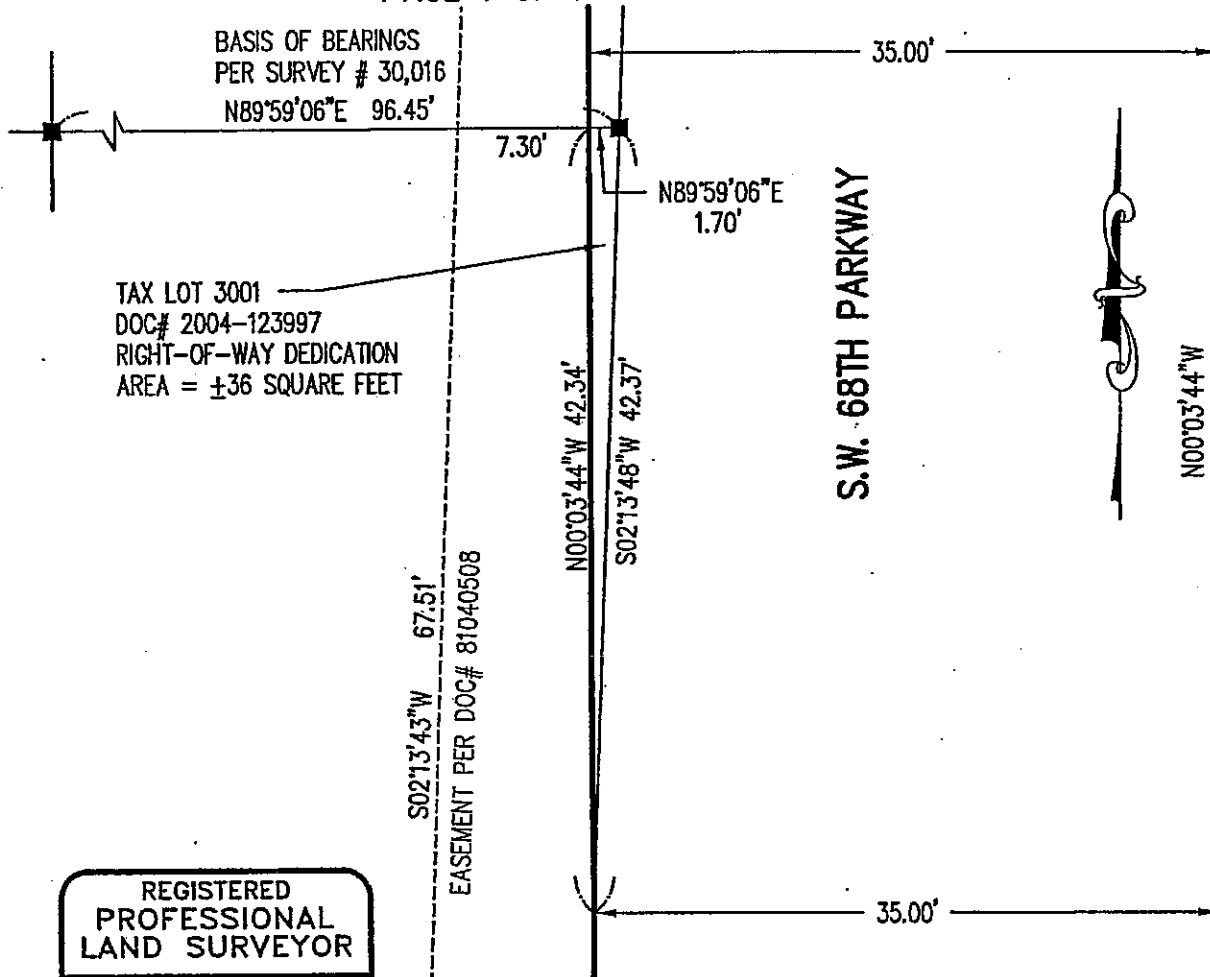
The basis of bearings for this description is between found monuments along the north line of said Jack B. Root and Wilma L. Root parcel, per survey number 30,016, on record with the Washington County Surveyor's Office.

# EXHIBIT D-3

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION  
VARIED WIDTH RIGHT OF WAY DEDICATION  
FOR TAX LOT 3001 MAP 1S136DD  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
AUGUST 8, 2005

PAGE 1 OF 1

SCALE 1" = 10 FEET



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JANUARY 15, 2002  
CLINTON H. STUBBS JR.  
55469LS

RENEWAL DATE: 06/30/06

■ FOUND 5/8" IRON ROD WITH  
YELLOW PLASTIC CAP STAMPED  
"NORTHWEST SURVEYING, LLC",  
PER SURVEY NUMBER 30,016

## PREPARED FOR:

SPECHT DEVELOPMENT, INC  
15400 SW MILLIKAN WAY  
BEAVERTON, OR 97006

JOB NAME: DARTMOUTH ST.

JOB NUMBER: 56

DRAWING NUMBER: 56DEDICATIONS

DRAWN BY: CHS

CHECKED BY: CHS

**NORTHWEST  
SURVEYING, LLC**

PO BOX 7177  
BEAVERTON, OR 97007  
PHONE: 503-848-2127  
FAX: 503-848-2179  
EMAIL: nwsurveying@verizon.net



AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Public Hearing Considering LUBA remand of Ash Creek Estates Subdivision  
(SUB2003-00010/ZON2003-00003/PDR2003-00004/SLR2003-00005/VAR2003-00036/VAR2003-00037)

PREPARED BY: Dick Bewersdorff DEPT HEAD OK TC CITY MGR OK cl

ISSUE BEFORE THE COUNCIL

This is a consideration of applicant's submittal to protect an additional 23 trees as a part of their subdivision application.

STAFF RECOMMENDATION

It is recommended that the City Council approve the attached Resolution approving the subdivision/planned development with the revised tree plan and the findings and conditions adopted as part of the City Council's February 5, 2005 decision.

INFORMATION SUMMARY

The Planning Commission reviewed this subdivision at its July 7, 2003 meeting. As a result of a tie vote, the Commission's action resulted in a defacto denial. The City Council held a public hearing on the appeal of the denial on August 12, 2003 and September 9, 2003. The Council adopted findings and conditions of approval on October 28, 2003. An erroneous date reference required adopting an amended resolution of November 4, 2003. This decision was appealed to LUBA and LUBA remanded the decision to the City based on 4 of 25 assignments of error on August 20, 2004. The City Council approved a revised application on February 22, 2005. This decision was appealed to LUBA. LUBA then remanded the decision to the City for consideration of only the issue whether CDC 18.350.100.B.3a(1) had been complied with as to trees that were protected in the original tree plan but not protected in the tree plan submitted on the first remand. The applicant has submitted revised plans to protect the additional 23 trees. This is the only issue before Council consideration.

OTHER ALTERNATIVES CONSIDERED

Prepare findings to deny the request.

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Growth and Growth Management – Goal #1, Accommodate growth while protecting the character and livability of the new and established areas.

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ATTACHMENT LIST

**Attachment 1: Proposed Resolution Adopting Findings & Conditions**

Exhibit A – Staff report and conditions of approval of January 25, 2005 as adopted by the Council

Exhibit B – Resolution 03-61

Exhibit C – Resolution 03-58

**Attachment 2: City Attorney's Memorandum**

**Attachment 3: Letter from Applicant's Attorney dated 2/9/06 including the Revised Tree Plan**

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FISCAL NOTES

Staff time, advertising costs and report analysis preparation are not reimbursable as a part of the LUBA remand process.

CITY OF TIGARD, OREGON

RESOLUTION NO. 06-\_\_\_\_\_

A RESOLUTION AND FINAL ORDER APPROVING THE ASH CREEK ESTATES SUBDIVISION (SUBDIVISION (SUB) 2003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ZONE CHANGE (ZON) 2003-00003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ADJUSTMENT (VAR) 2003-00036/ADJUSTMENT (VAR) 2003-00037) – ON REMAND FROM LUBA; AND ADOPTING FINDINGS AND IMPOSING CONDITIONS.

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WHEREAS, the Planning Commission initially reviewed this case at a public hearing at its meeting on July 7, 2003; and

WHEREAS, the Planning Commission made motions to both deny and approve the application, both of which failed in a 4-4 tie vote; and

WHEREAS, the by-laws of the Planning Commission and Robert's Rules of Order specify that if an affirmative vote in favor of an application is not attained, the application is denied. Since the denial occurred de facto, no findings were adopted, and the denial is without prejudice; and

WHEREAS, the City Council held a public hearing on the appeal of the denial on August 12, 2003 and September 9, 2003; and

WHEREAS, the City Council adopted findings and conditions of approval that were prepared by the applicant, Winwood Construction, on October 28, 2003 by Resolution 03-58; and

WHEREAS, the Resolution contained an erroneous date reference and was corrected by adopting the amended Resolution 03-61 on November 4, 2003; and

WHEREAS, the City Council's decision was appealed to the State Land Use Board of Appeals (LUBA) on November 25, 2003 based on 25 alleged errors and sub errors in the decision; and

WHEREAS, LUBA concluded in their Final Opinion and Order (LUBA No. 2003-194) on August 20, 2004 that 21 of those assignments of error were denied, but remanded the decisions back to the city on four issues; and

WHEREAS, the City Council on February 22, 2005, after a duly noticed hearing approved the revised application on remand; and

WHEREAS, the City's February 22, 2005 decision was appealed to LUBA, which remanded the decision on the very narrow issue whether CDC 18.350.100.B.3a(1) had been complied with as to those trees that were protected in the tree plan originally approved but not protected in the tree plan submitted on the first remand; and

WHEREAS, applicant has submitted a second revised tree plan that designates those 23 trees for protection but is otherwise the same as the revised tree plan;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council approves applications SUB2003-00010/PDR2003-00004/ZON2003-00003/SLR2003-00005/VAR2003-00036/VAR2003-00037 – Ash Creek Estates Subdivision – subject to the conditions of approval stated in the staff's January 25, 2005 report to Council, attached hereto as **Exhibit A** and incorporated herein by this reference and the additional condition (Condition 59) stated in Section 3 of this resolution. The Council adopts the findings stated in the January 25, 2005, staff report, and the additional finding stated in Section 2.

SECTION 2: The Council adopts the following additional finding:

CDC 18.350.100B.3.a(1) requires that in planned developments:

- (1) The streets, buildings and other site elements shall be designed and located to preserve the existing trees, topography and natural drainage to the greatest degree possible;

LUBA has remanded this matter on the narrow issue whether this standard has been met, given that the original tree plan showed that trees would be protected within certain areas and the revised tree plan showed that 23 trees would be removed within the area designated for protection in the original tree plan. The applicant has submitted a second revised tree plan, dated September 22, 2005, that protects all 23 trees that were the basis for the LUBA remand. The second revised tree plan is otherwise identical to the revised tree plan submitted after the first remand. LUBA explicitly stated that the remand issue was limited to consideration of those 23 trees.

The Council finds that because the 23 trees at issue will be protected, the standard of CDC 18.350.100B.3.a(1) is met. The site elements have been designed and located to preserve existing trees to the greatest extent possible.

SECTION 3: The Council imposes the following additional condition of approval (Condition 59):

Applicant shall comply with and implement the second revised tree plan (dated September 22, 2005). Applicant shall protect trees designated for preservation in the second revised tree plan as provided in Conditions 55 through 58 (**Exhibit A**).

SECTION 4: The Tigard City Council incorporates resolutions 03-61 and 03-58 along with the related findings attached hereto as **Exhibit B** and **Exhibit C** respectively and incorporated herein by this reference to the extent that the findings contained therein do not conflict with the findings adopted in Sections 1 and 2.

SECTION 5: This resolution is effective when notice of the decision is mailed.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
Mayor, City of Tigard

ATTEST:

\_\_\_\_\_  
City Recorder – City of Tigard

Agenda Item:

Hearing Date:

February 8, 2005

Time: 7:30 PM

**STAFF REPORT TO THE  
CITY COUNCIL  
FOR THE CITY OF TIGARD, OREGON**



90 DAY REMAND PERIOD = 3/13/2005

**SECTION I. APPLICATION SUMMARY**

<b>FILE NAME:</b>	<b>REMAND of ASH CREEK ESTATES SUBDIVISION</b>	
<b>LUBA FILE NO:</b>	<b>2003-194</b>	
<b>CITY CASE NO'S:</b>	<b>Subdivision (SUB)</b>	<b>SUB2003-00010</b>
	Zone Change (ZON)	ZON2003-00003
	Planned Development Review (PDR)	PDR2003-00004
	Sensitive Lands Review (SLR)	SLR2003-00005
	Adjustment (VAR)	VAR2003-00036
	Adjustment (VAR)	VAR2003-00037

**APPLICANT:** Dale Richards  
Winwood Construction  
12655 SW North Dakota Street  
Tigard, OR 97223

**PROJECT CONTACT:** Kurahashi and Associates  
Attn: Greg Kurahashi  
15580 SW Jay, Suite 200  
Beaverton, OR 97006

**OWNER:** Ernest E. and Elda H. Senn  
9750 SW 74<sup>th</sup> Avenue  
Tigard, OR 97223

**REQUEST:** The State Land Use Board of Appeals (LUBA) has remanded City Council's approval of a 29-lot planned development on 9.3 acres and associated sensitive lands and adjustment reviews for additional findings to support their decision. This hearing is limited to the four specific assignments of error which are generally:

- 1) the City's acceptance of lower "K" values in relation to the proposed vertical sag curve on SW 74<sup>th</sup> and demonstration that the City Engineer is authorized to approve such deviations to adopted street standards,
- 2) the requirement that the applicant prepare and submit a tree plan that identifies the size, species, and location of trees on the site, provides a removal plan, protection plan, and mitigation program in accordance with TCDC 18.790,
- 3) revised findings are required for the proposed curb tight sidewalks on SW 74<sup>th</sup> to address the relevant criteria of TCDC 18.370.C.11., and
- 4) additional findings related to the landscape protection criteria of TCDC 18.745.030.E.

**ZONING**

**DESIGNATION:** R-4.5: Low-Density Residential District.

**LOCATION:** 9750 SW 74<sup>th</sup> Avenue; WCTM 1S125DC, Tax Lots 300 and 400.

**APPLICABLE  
REVIEW  
CRITERIA:**

Community Development Code Chapters 18.370, 18.790, and 18.810

**SECTION II. STAFF RECOMMENDATION**

Staff recommends that the City Council accept and adopt the additional findings presented in the applicant's submittal, as further elaborated on within this report and find that the proposed Planned Development and street adjustments will not adversely affect the health, safety and welfare of the City and meets the Approval Criteria outlined in this report. Therefore, Staff recommends **APPROVAL**, subject to the Conditions of Approval and Findings adopted previously as Resolution 03-61 and further refined, and amended within this report:

**CONDITIONS OF APPROVAL**

(Note, conditions #1-51 are from the original decision and are included for reference only)

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED PRIOR TO COMMENCING ANY ONSITE IMPROVEMENTS, INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES:**

Submit to the Planning Department (Morgan Tracy, 639-4171, ext. 2428) for review and approval:

1. Prior to site work, the applicant shall submit an arborist report with tree protection recommendations, and shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
2. Prior to site work, the applicant shall submit a complete set of construction documents with the tree locations for the City Arborists review. The applicant will not cut any healthy trees within the designated open space tract. Furthermore, the applicant shall not cut any healthy trees in the tree preservation areas of Lots 1-18, which shall be defined as the area at least 15' from the rear of the building footprints. However, if an arborist determines that trees in these areas are dead, diseased, or pose a safety hazard, then the applicant shall remove affected trees from those areas.
3. Prior to site work, the applicant shall notify the City Arborist at least 48 hours prior to commencing construction when the tree protection measures are in place so that he may verify that the measures will function properly.
4. Prior to site work, the applicant shall provide evidence of all necessary approvals for work within the wetlands from US Army Corps of Engineers and the Division of State Lands.
5. Prior to site work, the drainage tract must be clearly identified in the field with permanent (preferably with minimum 4-foot-tall black chainlink) fencing so as to insure no grading or material is placed in this area. Any fencing that is damaged during construction must be replaced prior to final building inspection. If the damage is such that it will no longer effectively identify the tract, it shall be replaced/reinstalled immediately.
6. Prior to site work, a signed approval shall be included with the City's construction drawing packet.

**Submit to the Engineering Department (Kim McMillan, 639-4171, ext. 2642) for review and approval:**

7. Prior to approval of construction plans, the applicant shall "pothole" the City of Tualatin's main water transmission line to determine the exact location and condition of the pipe. The applicant shall notify the City of Tigard and the City of Tualatin 48 hours prior to the pothole inspections and when any construction activity will impact the pipe (such as placement of fill and excavation in the immediate vicinity) so that a representative from both the Cities of Tualatin and Tigard can be present.
8. Prior to commencing onsite improvements, a Public Facility Improvement (PFI) permit is required for this project to cover all infrastructure and any other work in the public right-of-way. Eight (8) sets of detailed public improvement plans shall be submitted for review to the Engineering Department. NOTE: these plans are in addition to any other drawings required by the Building Division and should only include sheets relevant to public improvements. Public Facility Improvement (PFI) permit plans shall conform to City of Tigard Public Improvement Design Standards, which are available at City Hall and the City's web page ([www.ci.tigard.or.us](http://www.ci.tigard.or.us)).
9. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public improvements. For example, specify if the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Engineering Department will delay processing of project documents.
10. The applicant shall provide a construction vehicle access and parking plan for approval by the City Engineer. The purpose of this plan is for parking and traffic control during the public improvement construction phase. All construction vehicle parking shall be provided on-site. No construction vehicles or equipment will be permitted to park on the adjoining residential public streets. Construction vehicles include the vehicles of any contractor or subcontractor involved in the construction of site improvements or buildings proposed by this application, and shall include the vehicles of all suppliers and employees associates with the project.
11. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 74<sup>th</sup> Avenue. The improvements adjacent to this site shall include:
  - A. City standard pavement section for a neighborhood route, without bike lanes, from curb to centerline equal to 16 feet, with a minimum pavement width of 24 feet;
  - B. Pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
  - C. Concrete curb, or curb and gutter as needed;
  - D. Storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;
  - E. 5-foot concrete sidewalk with a planter strip (unless adjusted);
  - F. Street trees in the planter strip spaced per TDC requirements;
  - G. Street striping;



- H. Streetlight layout by applicant's engineer, to be approved by City Engineer;
  - I. Underground utilities;
  - J. Street signs (if applicable);
  - K. Driveway apron (if applicable);
  - L. Adjustments in vertical and /or horizontal alignment to construct SW 74<sup>th</sup> Avenue in a safe manner, as approved by the Engineering Department, including reductions to the speed limit as necessary; and
  - M. Right-of-way dedication to provide 27 feet from centerline.
12. The applicant's Public Facility Improvement permit construction drawings shall indicate that full width street improvements, including traffic control devices, mailbox clusters, concrete sidewalks, driveway aprons, curbs, asphaltic concrete pavement, sanitary sewers, storm drainage, street trees, streetlights, and underground utilities shall be installed within the interior subdivision streets. Improvements shall be designed and constructed to local street standards.
13. A profile of 74<sup>th</sup> Avenue shall be required, extending 300 feet either side of the subject site showing the existing grade and proposed future grade.
14. The applicant's construction drawings shall show that the pavement and rock section for the proposed private street(s) shall meet the City's public street standard for a local residential street.
15. The applicant shall obtain approval from the Tualatin Valley Water District for the proposed water connection prior to issuance of the City's Public Facility improvement permit.
16. Final design plans and calculations for the proposed public water quality/detention facility shall be submitted to the Engineering Department (Kim McMillan) as a part of the Public Facility Improvement plans. Included with the plans shall be a proposed landscape plan to be approved by the City Engineer. The proposed facility shall be dedicated in a tract to the City of Tigard on the final plat. As a part of the improvement plans submittal, the applicant shall submit an Operations and Maintenance Manual for the proposed facility for approval by the Maintenance Services Director. The facility shall be maintained by the developer for a three-year period from the conditional acceptance of the public improvements. A written evaluation of the operation and maintenance shall be submitted and approved prior to acceptance for maintenance by the City. Once the three-year maintenance period is completed, the City will inspect the facility and make note of any problems that have arisen and require them to be resolved before the City will take over maintenance of the facility. In addition, the City will not take over maintenance of the facility unless 80 percent of the landscaping is established and healthy. If at any time during the maintenance period, the landscaping falls below the 80 percent level, the developer shall immediately reinstall all deficient planting at the next appropriate planting opportunity.
17. An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to the "Erosion Prevention and Sediment Control Design and Planning Manual, December 2000 edition."
18. A final grading plan shall be submitted showing the existing and proposed contours. The plan shall detail the provisions for surface drainage of all lots, and show that they will be graded to ensure the surface drainage is directed to the street or a public storm drainage system

approved by the Engineering Department. For situations where the back portions of lots drain away from a street and toward adjacent lots, appropriate private storm drainage lines shall be provided to sufficiently contain and convey runoff from each lot.

19. The applicant shall incorporate the recommendations from the submitted geotechnical report by GeoPacific Engineering, Inc., dated May 9, 2003, into the final grading plan. The applicant shall have the geotechnical engineer ensure that all grading, including cuts and fills, are constructed in accordance with the approved plan and Appendix Chapter 33 of the UBC. A final construction supervision report shall be filed with the Engineering Department prior to issuance of building permits.
20. The design engineer shall indicate, on the grading plan, which lots will have natural slopes between 10% and 20%, as well as lots that will have natural slopes in excess of 20%. This information will be necessary in determining if special grading inspections and/of permits will be necessary when the lots develop.
21. The final construction plans shall be signed by the geotechnical engineer to ensure that they have reviewed and approved the plans. The geotechnical engineer shall also sign the as-built grading plan at the end of the project.
22. The applicant shall obtain a 1200-C General Permit issued by the City of Tigard pursuant to ORS 468.740 and the Federal Clean Water Act.

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**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO APPROVAL OF THE FINAL PLAT:**

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**Submit to the Planning Department (Morgan Tracy, 639-4171, ext 2428) for review and approval:**

23. Prior to approval of the final plat, the applicant shall revise the plat to accommodate a minimum of 25 feet of frontage for all lots within the development.
24. Submit a revised street tree/landscape plan that shows an alternative tree species used for the public street to vary the streetscape.
25. The applicant shall provide joint access within an easement or tract to Lots 28 and 29 and cause a statement to be placed on the plat limiting additional direct vehicular access to SW 74<sup>th</sup> Avenue.
26. Provide a plat name reservation approval from Washington County.
27. Prior to final subdivision plat approval, the applicant shall convey title for the proposed open space to a homeowner's association in accordance with the requirements of Section 18.350.110.A.2.b of the Tigard Development Code.

**Submit to the Engineering Department (Kim McMillan), 639-4171, ext. 2642) for review and approval:**

28. Prior to approval of the final plat the applicant shall obtain a plumbing permit for the construction of the private storm line in the private street.

29. Prior to approval of the final plat, the applicant shall pay an addressing fee in the amount of \$900.00 (Staff Contact: Shirley Treat, Engineering).
30. Prior to approval of the final plat, the applicant shall cause a statement to be placed on the final plat to indicate that the proposed private street(s) will be jointly owned and maintained by the private property owners who abut and take access from it (them).
31. Prior to approval of the final plat, the applicant shall prepare Conditions, Covenants and Restrictions (CC&R's) for this project, to be recorded with the final plat, that clearly lays out a maintenance plan and agreement for the proposed private street(s). The CC&R's shall obligate the private property owners within the subdivision to create a homeowner's association to ensure regulation of maintenance for the street(s). The CC&R's shall additionally establish restrictions regarding the removal of trees greater than 12 inches in diameter from any of the lots or tracts following completion of the subdivision improvements. Trees may only be allowed to be removed subject to a certified arborist's finding that the trees are dead, or in severe decline. The applicant shall submit a copy of the CC&R's to the Engineering Department (Kim McMillan) and the Planning Department (Morgan Tracy) prior to approval of the final plat.
32. Prior to approval of the final plat, the applicant shall demonstrate that they have formed and incorporated a homeowner's association.
33. Prior to approval of the final plat, the applicant shall either place the existing overhead utility lines along SW 74<sup>th</sup> Avenue underground as a part of this project, or they shall pay the fee in-lieu of under grounding. The fee shall be calculated by the frontage of the site that is parallel to the utility lines and will be \$27.50 per lineal foot. If the fee option is chosen, the amount will be \$11,578.00 and it shall be paid prior to final plat approval.
34. Prior to approval of the final plat, the applicant shall provide a maintenance access road to the facility and any drainage structures within the facility to accommodate City maintenance vehicles. The access road shall be paved and have a structural section capable of accommodating a 50,000-pound vehicle. The paved width shall be a minimum of 10 feet wide, and there shall be two-foot rock shoulders provided on each side. If the maintenance roadway is over 150 feet in length, a turnaround shall be provided.
35. The applicant's final plat shall contain State Plane Coordinates on two monuments with a tie to the City's global positioning system (GPS) geodetic control network (GC 22). These monuments shall be on the same line and shall be of the same precision as required for the subdivision plat boundary. Along with the coordinates, the plat shall contain the scale factor to convert ground measurements to grid measurements and the angle from north to grid north. These coordinates can be established by:
- GPS tie networked to the City's GPS survey.
  - By random traverse using conventional surveying methods.
36. Final Plat Application Submission Requirements:
- A. Submit for City review four (4) paper copies of the final plat prepared by a land surveyor licensed to practice in Oregon, and necessary data or narrative.

- B. Attach a check in the amount of the current final plat review fee (Contact Planning/Engineering Permit Technicians, at (503) 639-4171, ext. 426).
- C. The final plat and date or narrative shall be drawn to the minimum standards set forth by the Oregon Revised Statutes (ORS 92.05), Washington County, and by the City of Tigard.
- D. The right-of-way dedication for 74<sup>th</sup> Avenue shall be made on the final plat.
- E. Note: Washington County will not begin their review of the final plat until they receive notice from the Engineering Department indicating that the City has reviewed the final plat and submitted comments to the applicant's surveyor.
- F. After the City and County have reviewed the final plat, submit two mylar copies of the final plat for City Engineer signature (for partitions), or City Engineer and Community Development Director signatures (for subdivisions).

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**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO ISSUANCE OF BUILDING PERMITS:**

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**Submit to the Planning Department (Morgan Tracy, 639-4171, ext. 2428) for review and approval:**

- 37. Prior to issuance of any building permits, re-plant any area where vegetation has been removed as a result of grading in conformance with the Clean Water Services Standards as set forth in the site assessment file #2819, prior to obtaining building permits.
- 38. Prior to issuance of any building permits, the applicant shall submit plans that show one (1) off-street parking space, which meets minimum dimensional requirements and setback requirements as specified in Title 18, provided on-site for each new home.
- 39. At the time of application for building permits for individual homes, the applicant shall demonstrate that each site will be accessed by a minimum 10-foot-wide paved access.
- 40. Prior to the issuance of building permits, the developer shall sign a copy of the City's sign compliance agreement.
- 41. Prior to the issuance of building permits the applicant shall submit a revised plan that indicates the modified setbacks as set forth in this decision and record a copy of the approved setback plan with the deeds for each lot.
- 42. Prior to issuance of building permits for structures on the individual lots within this development, the applicant shall demonstrate compliance with the height requirement of the underlying zone. The requirement calls for 30-foot maximum height for primary units and 15 feet maximum for all accessory structures.
- 43. Prior to the issuance of building permits on any lot, the applicant must provide city staff with a letter from Clean Water Services that indicates compliance with the approved service provider letter (#2819).

**Submit to the Engineering Department (Kim McMillan, 639-4171, ext. 2642) for review and approval:**

44. Prior to issuance of building permits the applicant's engineer shall provide a post-construction sight distance certification for the new intersection at 74<sup>th</sup> Avenue.
45. The City Engineer may determine the necessity for, and require submittal and approval of, a construction access and parking plan for the home building phase. If the City Engineer deems such a plan necessary, the applicant shall provide the plan prior to issuance of building permits.
46. Prior to issuance of building permits, the City Engineer shall deem the public improvements substantially complete. Substantial completion shall be when: 1) all utilities are installed and inspected for compliance, including franchise utilities, 2) all local residential street have at least one lift of asphalt, 3) any off-street and/or utility improvements are substantially completed, and 4) all street lights are installed and ready to be energized. Note: The City apart from this condition, and in accordance with the City's model home policy may issue model home permits).
47. Prior to issuance of building permits, the applicant shall provide the City with as-built drawings of the public improvements as follows: 1) 3 mil mylar, 2) a diskette of the as-builts in "DWG" format, if available; otherwise "DXF" will be acceptable, and 3) the as-built drawings shall be tied to the City's GPS network. The applicant's engineer shall provide the City with an electronic file with points for each structure (manholes, catch basins, water valves, hydrants and other water system features) in the development, and their respective X and Y State Plane Coordinates, referenced to NAD 83 (91).
48. Prior to issuance of building permits, the applicant shall provide the Engineering Department with a "photo mylar" copy of the recorded final plat.
49. The applicant shall provide signage at the entrance of each shared flag lot driveway or private street that lists the addresses that are served by the given driveway or street.

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**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO ISSUANCE OF FINAL BUILDING INSPECTION:**

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50. The applicant shall install street trees and an evergreen hedge of Leyland Cypress spaced no greater than three feet on center along the northern property line of Lots 1-10 and the eastern property line of Lots 10-12.

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**ADDITIONAL CONDITIONS OF APPROVAL  
FOR ASH CREEK ESTATES:**

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51. The applicant and future owners of lots within the development shall ensure that the requirements of Tigard Community Development Code (TCDC) 18.725, Environmental Performance Standards, are complied with at all times.

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## ADDITIONAL CONDITIONS IMPOSED THROUGH REMAND FINDINGS AND ANALYSIS

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52. Prior to commencing site work, the applicant shall submit construction drawings that show advisory "15 mph" speed limit signs to be placed in advance of the crest and sag curves on SW 74<sup>th</sup> in accordance with the City Engineer's Memorandum of January 25, 2005, which requires that the sag be monitored after construction to determine if any other measures need to be taken. The applicant shall be responsible for installation of additional measures within a year after construction of the street is accepted by the City if monitoring indicates that additional traffic control measures are needed.
53. Prior to commencing site work, the applicant shall submit a bond for the equivalent value of mitigation required (3,446 number of caliper inches times \$125 per caliper inch). If additional trees are preserved through the subdivision improvements and construction of houses, and are properly protected through these stages by the same measures afforded to other protected trees on site, the amount of the bond may be correspondingly reduced. Any trees planted on the site or off site in accordance with 18.790.060 (D) will be credited against the bond, for two years following final plat approval. After such time, the applicant shall pay the remaining value of the bond as a fee in lieu of planting.
54. Prior to issuance of building permits, the applicant/owner shall record a deed restriction for each lot to the effect that any existing tree greater than 12" diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.
55. Prior to commencing any site work, the applicant shall submit construction drawings that include the approved Tree Removal, Protection and Landscape Plan. The "Tree Protection Steps" identified in Teragan & Associates Letter of November 19, 2004, shall be reiterated in the construction documents. The plans shall also include a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving. Only those trees identified on the approved Tree Removal plan are authorized for removal by this decision.
56. Prior to commencing any site work, the applicant shall establish fencing as directed by the project arborist to protect the trees to be retained. The applicant shall allow access by the City Forester for the purpose of monitoring and inspection of the tree protection to verify that the tree protection measures are performing adequately. Failure to follow the plan, or maintain tree protection fencing in the designated locations shall be grounds for immediate suspension of work on the site until remediation measures and/or civil citations can be processed.
57. Prior to final plat approval, the applicant shall ensure that the Project Arborist has submitted written reports to the City Forester, once every two weeks, from initial tree protection zone (TPZ) fencing installation, through site work, as he monitors the construction activities and progress. These reports should include any changes that occurred to the TPZ as well as the condition and location of the tree protection fencing. If the amount of TPZ was reduced then the Project Arborist shall justify why the fencing was moved, and shall certify that the construction activities to the trees did not adversely impact the overall, and long-term health and stability of the tree(s). If the reports are not submitted or received by the City Forester at the scheduled intervals, and if it appears the TPZ's or the Tree Protection Plan is not being

followed by the contractor, the City shall stop work on the project until an inspection can be done by the City Forester and the Project Arborist. This inspection will be to evaluate the tree protection fencing, determine if the fencing was moved at any point during construction, and determine if any part of the Tree Protection Plan has been violated.

58. Prior to issuance of building permits, the applicant shall submit site plan drawings indicating the location of the trees that were preserved on the lot, location of tree protection fencing, and a signature of approval from the project arborist regarding the placement and construction techniques to be employed in building the house. All proposed protection fencing shall be installed and inspected prior to commencing construction, and shall remain in place through the duration of home building. After approval from the City Forester, the tree protection measures may be removed.

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**THIS APPROVAL SHALL BE VALID FOR 18 MONTHS FROM THE EFFECTIVE DATE OF THE CITY COUNCIL'S FINAL DECISION.**

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### **SECTION III. BACKGROUND INFORMATION**

#### **Application History**

The property is currently developed with one single-family residence and a couple of small outbuildings. On July 7<sup>th</sup>, 2003, the Tigard Planning Commission held a public hearing to consider an application for a 29 lot subdivision and planned development on 9.36 acres. The property is located at 9750 SW 74<sup>th</sup> Avenue. The proposal is to provide single-family detached housing on lots ranging between 4,702 and 11,616 square feet.

The Planning Commission moved to deny the application, which failed in a 4-4 tie vote. The Commission then moved to approve the application, which also failed in a 4-4 tie vote. Based on the Commission's by-laws and Robert's Rules of Order, without a majority affirmative vote, the application is denied. Since no motion was approved, no findings in support or against the application were adopted.

The applicant, Dale Richards of Windwood Homes, filed an appeal of the application denial on July 15, 2003. His stated grounds for the appeal are "That applicant contends that the Planning Commission should have adopted specific grounds for denial. The denial should have been based on the proposed plan not meeting the Development Code. All specific requirements of the code were met. The applicant, therefore, proposes that the project should be approved through the appeal process."

On August 12, 2003, the City Council held a public hearing on the appeal to reconsider the application, de novo. Based on the large numbers of those in attendance wishing to testify, there was insufficient time to receive testimony from all interested parties. Therefore Council continued the public hearing to the September 9<sup>th</sup> Council meeting to complete the public testimony.

At the September 9, 2003 hearing, the applicant offered rebuttal to the points raised by the opponents. After the hearing closed, Council members indicated that they were persuaded the requirements of the Development Code had been met and approved a motion for tentative decision for approval of the application. Council directed the applicant to provide the written findings for this decision for final Council consideration at its October 28, 2003 meeting. The applicant submitted

findings along with modified conditions of approval to support the decision. At the October meeting, Council adopted resolution 03-58 approving the Ash Creek Estates Subdivision.

In that resolution, a reference was made to a letter dated September 26, 2003 from the applicant. That date was erroneous. The letter which established the Conditions of Approval for the project is dated October 10, 2003. The correct letter, and consequently the correct findings and conditions of approval were incorporated in the adopted resolution. Only the reference to the date of the letter in the resolution was in error. As a result, on November 4, 2003, the City Council adopted a resolution (Resolution No. 03-61) correcting the reference.

Within the 21-day appeal period established for appeals to the State Land Use Board of Appeals, John Frewing filed an appeal with LUBA. On August 20, 2004, the Land Use Board of Appeals ("LUBA"), issued a decision to remand the City's decision approving the application. LUBA's decision specified four instances where it found the City's findings insufficient.

#### Vicinity Information:

The site is located in the northwest corner of the City limits, south of SW Taylor's Ferry Road, on the east side of SW 74<sup>th</sup> Avenue. The property is surrounded on all sides by single-family residences on lots that vary in size. There is a stream (Ash Creek) on the property that runs in an east west direction along the southern property boundary. This drainageway contains wetlands and areas of steep slopes.

#### Proposal Information:

The applicant is proposing to subdivide the parcel into 29 lots for single-family residences. Because of the trees, wetlands, and slopes on the site, the applicant has requested a planned development to allow them to vary the underlying zoning standards to develop around these features. The applicant is also requesting an adjustment to allow a curb tight sidewalk as opposed to a sidewalk separated from the travel surface by a planter strip, and an adjustment to the cul-de-sac standards limiting the number of units on a cul-de-sac and the 200-foot maximum length permitted for a cul-de-sac.

## **SECTION IV. DECISION MAKING PROCEDURES, PERMITS AND USE**

### **USE CLASSIFICATION: SECTION 18.130.020**

#### **Lists the Use Categories.**

The applicant is seeking approval of a 29-lot subdivision on 9.3 acres. The lots are to be developed with detached single-family homes. Single family residential development is outright permitted in the R-4.5 zone. The existing single-family home is to be demolished. Lot sizes within the proposed development are between 4,702 and 11,616 square feet and average 6,424 square feet. The applicant is also proposing to set aside approximately 4.15 acres in an open space tract for the drainageway and wetland area. A private street cul-de-sac is also proposed to extend from the public street stub into the property. The site is located within the R-4.5, Low Density Residential District. Planned Developments are permitted in all zoning districts. The applicant has applied for conceptual and detailed planned development approval in conjunction with the subdivision.

### **SUMMARY OF LAND USE PERMITS: CHAPTER 18.310**

#### **Defines the decision-making type to which the land-use application is assigned.**

This is a Planned Development/Subdivision, which is defined as a Type III-PC Application. The Planning Commission decision is appealable to the City Council. The City Council decision is the final



decision at the local level. Appeals of City Council decisions are heard at the State level by the Land Use Board of Appeals (LUBA). LUBA may either affirm, reject, modify, or remand the decision back to the local decision making authority. In this case, LUBA remanded the decision for further consideration.

#### **DECISION MAKING PROCEDURES: CHAPTER 18.390**

##### **Describes the decision-making procedures.**

Type III procedures apply to quasi-judicial permits and actions that contain predominantly discretionary approval criteria. Type III-PC actions are decided by the Planning Commission with appeals to the City Council. Type III-HO actions are decided by the Hearings Officer with appeals to City Council. In cases where both the Hearings Officer and Planning Commission are involved, the Planning Commission has preferential jurisdiction, per Tigard Development Code (TDC) Section 18.390.080(D)(2)(a).

## **SECTION VI. APPLICABLE REVIEW CRITERIA AND FINDINGS**

As this case has been remanded from LUBA<sup>1</sup> based on four assignments of error related to insufficient evidence to support the City's conclusions, the applicable review criteria are those related to the specific assignments of error. City Council has previously reviewed this proposed development, and provided findings related to the other relevant portions of the review criteria. Those findings are memorialized by Resolutions 03-58 and 03-61. This review is limited to the criteria and issues that were raised by LUBA. The applicant provided a narrative and additional evidence to respond to the issues outlined in LUBA's remand. The findings contained herein are intended to supplement the City's existing adopted findings where consistent. In the case that the following findings conflict with the original findings, these findings shall govern.

LUBA's opinion on the four assignments of error on which it remanded are reproduced in their entirety in the following sections (distinguished by a different typeface), followed by the applicant's additional findings and Staff's analysis, as applicable.

### **1. ASSIGNMENT OF ERROR 5(B)**

LUBA found that there was inadequate evidence to support the City's position that it has the authority to approve a street design that does not meet the standard design specifications, especially as it relates to the vertical sag curve on SW 74<sup>th</sup> Avenue. The text of their discussion follows:

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#### **B. Vertical Sag Curve**

SW 74<sup>th</sup> Avenue along the western border of the property is currently unimproved. To improve SW 74<sup>th</sup> Avenue along the western border of the property a creek and wetlands near the southwestern corner of the property must be crossed, which will create a vertical sag curve.<sup>2</sup> With increased speed, the vertical sag curve needs to be more level or gentle to allow traffic traveling at the road's design speed to travel across the vertical sag curve safely. With decreased speed, the vertical sag curve can be steeper, or more severe, and still be safely

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<sup>1</sup> ORS 197.835(9) states "In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds [that] the local government or special district made a decision not supported by substantial evidence in the whole record."

<sup>2</sup> According to respondent, a vertical sag curve is the opposite of the type of curve that must be negotiated to climb and crest a hill and descend the other side of the hillcrest. In traversing a vertical sag curve, one descends to the bottom of the curve and then climbs up the other side of the curve.

traveled. The issue presented in this subassignment of error is whether the city approved construction of SW 74<sup>th</sup> with a vertical sag curve that is too steep. (emphasis added)

TCDC 18.810.020(B) provides that the City Engineer is to establish street construction standards.<sup>3</sup> The parties apparently agree that the City Engineer has done so. Attached to the petition for review, as Appendix B, are two figures that petitioner and the city apparently agree are street construction standards that have been adopted by the City Engineer. The first figure shows a typical road pavement section, which indicates that the design speed for local roads is 25 miles per hour. The second figure shows vertical sag curve "K" values for roads with different design speeds. We do not fully understand that table, but the vertical sag curve "K" values clearly increase with design speed. For example a road with a design speed of 25 miles per hour must have a K value of at least 13.4. For a road with a design speed of 55 miles per hour, a K value of at least 65.1 is required. It appears that the smaller the "K" value the steeper the vertical sag curve. Conversely, the larger the "K" value the more gentle the curve.

Rather than place fill in the area of the creek to decrease the severity of the vertical sag curve to a "K" value of at least 13.4, the county [sic] approved a steeper vertical sag curve with a "K" value of 5.4.<sup>4</sup> To allow the steeper vertical sag curve and maintain safety, the county [sic] reduced the speed limit that would otherwise apply to this part of SW 74<sup>th</sup> Avenue to 15 miles per hour. The county [sic] explained its decision as follows:

"The applicant also requested that the speed limit be reduced to 15 miles per hour in the section where the 74<sup>th</sup> Avenue crossing will occur. This speed limit was accepted by the City of Tigard Engineer. The city of Tigard standards are met by a 15 mile per hour vertical curve design, to a 'K value' of greater than 5 (AASHTO)." Record 43.

It may well be that a road with speed limited to 15 miles per hour with a vertical sag curve with a "K" value of greater than 5 is just as safe as roads with the design speeds shown on the table with vertical sag curves with the "K" value that corresponds to the different design speeds. However, the city's street standards seem to call for roads with a design speed of at least 25 miles per hour. Roads with a design speed of 25 miles per hour may have vertical sag curves with a "K" value of no less than 13.4. While avoiding the fill that will be necessary to achieve a vertical sag curve in this section of SW 74<sup>th</sup> Avenue might make sense from both environmental impact and traffic engineering perspectives, and might result in no compromise in safety if the posted speed limit is reduced to 15 miles per hour, **the city's findings identify no authority for simply deviating from the lowest "K" value that is specified in the city's standards, and reducing the speed on the street to maintain safety.**<sup>5</sup> (Emphasis added). If the City Engineer has retained discretion under the TCDC and any other related city regulations to simply deviate from the table and allow construction of a road with a lower "K" value and impose a speed limit to preserve safety, no party identifies such authority.

The findings simply say the City Engineer has accepted the proposal. Neither the city's findings nor the response brief identify any place in the record that explains the City Engineer's reasoning in support of the lower "K" value or the city's engineer's authority to approve deviations from the adopted "K" values. Without that explanation, we must sustain this subassignment of error.

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## **ADDITIONAL FINDINGS AND ANALYSIS**

SW 74<sup>th</sup> Avenue along the western border of the property is currently unimproved. The City required the applicant to make improvements to S.W. 74 as part of its approval (Conditions 10, 11, 13, 33, 45).

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<sup>3</sup>TCDC 18.810.020(B) provides:

"Standard specifications. The City Engineer shall establish [street and utility] standard specifications consistent with the application of engineering principles."

<sup>4</sup>The findings explain that to achieve a "K" value of 13.4 a great deal of fill would be required in the wetland and that fill would have to be placed on top of an existing water line. The city wished to avoid placing this amount of fill on the water line. Record 84.

<sup>5</sup>Taken to an extreme, if the speed limit were reduced to a crawl, we assume almost any "K" value could be accommodated.

The applicant has accepted these conditions. The applicant notes that due to the topography and the existence of a stream, the improvements to S.W. 74 will result in a fairly steep sag curve and a corresponding crest curve. There are standards that define how steep sag and crest curves can be at various speeds. The steepness of the curves is expressed as a "K" value. For example, at a speed of 25 miles per hour (mph), the typical standards require a vertical sag "K" value of no less than 13.4. In this case, the speed limit on S.W. 74<sup>th</sup> is 25 mph. To achieve a "K" value of 13.4, the applicant would have to place a significant amount of fill in S.W. 74 to make the sag curve shallower and the crest curve lower.

During the hearing process, the applicant provided evidence that significant fill would cause negative impacts to the resources adjacent to S.W. 74<sup>th</sup> and might possibly damage an existing 36-inch diameter water main serving the City of Tualatin that is in the street right of way. Also, in order to be able to maintain this line, the amount of earth over the line must be minimized. By designing the curves to meet the "K" values required for a 25 mile per hour design speed would result in fills greater than 35 feet deep. This would impede normal and emergency maintenance and repairs as well as make a large failure have catastrophic results (i.e. loss of the road and loss of water service to the City of Tualatin).

Also the fills would result in greater impacts to the creek with either larger footings for retaining walls or wider fill slope areas, which would remove a meander in the creek, more wetland area, and additional large trees from the sensitive area.

The applicant's engineer considered using a bridge as opposed to fill. The applicant's engineer concluded that a bridge would result in an unmaintainable water line that could not be repaired or maintained under the bridge deck and the line would be much too expensive to construct and maintain.

Relocating the waterline is not a viable option either since it would interrupt water service to the City of Tualatin. This would also increase the difficulty of maintaining the line as it would be in the waterway as well as have increased impacts to the sensitive resources.

As the applicant had previously presented, allowing for a lower speed limit is the only reasonable solution to the waterline construction and maintenance issue. At 15 mph, Windwood could make the required improvements using only 21.63 ft. of fill. While that means that any repair will still require some excavation, it is 13.27 feet less than what is required if the sag curve is designed at 25 mph, and as a result, much more viable to maintain.

Accordingly, the applicant proposed to lower the speed limit in the area of the sag curve to 15 mph. At that speed the sag curve "K" factor is no less than 5. The applicant could improve S.W.74<sup>th</sup> to meet that standard without significant fill. The City agreed with the applicant's proposal and, in the final findings, stated as follows:

"The applicant also requested that the speed limit be reduced to 15 mph in the section where the S.W. 74 Avenue crossing will occur. This speed limit was accepted by the City of Tigard Engineer. The City of Tigard standards are met by a 15 mph vertical curve design to a "K" value of greater than 5 (AASHTO)."

The City Engineer has provided a memorandum expressly approving the modified design by granting an exception to the standard. This exception is mitigated by the requirement for additional advisory signage and street lighting, as further described in the memo.

Section B (City of Tigard Standard Specifications) reads "The City Engineer shall establish standard specifications consistent with the application of engineering principles" The City's Public Improvement standards are based on AASHTO standards and the standards of Washington County. The preface to the City's design standards states: "The form has been kept brief and no attempt has been made to

cover all possible situations or to provide detailed explanations." In relation to sag curves and crest curves, the Washington County standards, as set forth in tables, include speeds of less than 25 mph and speeds as low as 15 mph. Because the City's published tables are not intended to be comprehensive and because they are based on Washington County standards, the applicant asserts, and the City agrees that the City Engineer has the authority to approve a design based on a 15 mph speed consistent with Washington County standards. The Washington County table confirms that the applicant's proposed design meets AASHTO standards since Washington County designs conform to AASHTO.

In fact, the applicant's proposed design exceeds Washington County's standards. Washington County's standard for both sag and crest curves require a "K" value of at least 5.0 at 15 mph. The applicant's proposed design will result in a "K" value of 5.3.

In order to clarify the authority to "set" speed limits, the applicant's engineer contacted the State of Oregon. The speed limit is set by the State as 25 miles per hour as the normal speed limit on all residential streets. Where specific sections of streets cannot meet this standard, cities have authorization to provide design exceptions that allow for sections of streets that they are in ownership of to be constructed, reconstructed, or repaired that don't meet the speed limit standards. The State administers design exceptions on its own highways as well. According to the State, design exceptions at the state level are mitigated by using advisory signs as well as other safety measures. Jurisdictions are, therefore, allowed to post special signs and take other measures to safely control traffic.

The applicant proposes two options:

Option 1: Advisory Signage

- A. Install "Bump" sign with 15 mph advisory sign below it.
- B. Install "DIP" sign with 15 mph advisory sign below it.

(Place sign in advance of crest or sag to allow safe reaction and deceleration time.)

Option 2: Three Way Stop Intersection

- A. Install a "3 -Way Stop" at the intersection of the new public road access to S.W. 74 Avenue.
- B. Install "DIP" sign with 15 mph advisory sign below it.

(Place sign in advance of crest or sag to allow safe reaction and deceleration time.)

Although Option 2 would result in a stop sign on S.W. 74 which is a through street, this would remove the need to sign the street for 15 miles per hour at the crest since the stop sign will slow traffic to an approach speed of 15 mph at the critical location. Although this would not meet warrants for a "need" by ASSHTO standards, this would be a very effective "legal" mitigation for the crest not meeting speed design standards. These measures would qualify as a mitigation for the sag and crest.

The City Engineer has determined that neither option presented is desirable. Option 1 seemingly calls for the installation of a speed bump, which could exacerbate the present deficient "K" value, and there is insufficient documentation in the record to indicate the effects of such a proposal. Option 2 proposes to install stop signs on a designated through route (SW 74<sup>th</sup> Avenue), without sufficient warrants to require the stop signs. The City Engineer has determined that placement of "15 mph" advisory signage in advance of the crest and sag in each direction are appropriate mitigation

measures and are sufficient to address the deficient "K" value. The City Engineer has determined that the sag should be monitored to verify whether the signage is sufficient to slow traffic. If not effective, the applicant will be required to install additional traffic control measures at the direction of the City Engineer within a year following completion of the street construction. A condition to this effect will be imposed:

**Recommended Condition of Approval (#52):**

Prior to commencing site work, the applicant shall submit construction drawings that show advisory "15 mph" speed limit signs to be placed in advance of the crest and sag curves on SW 74<sup>th</sup> in accordance with the City Engineer's Memorandum of January 25, 2005, which requires that the sag be monitored after construction to determine if any other measures need to be taken. The applicant shall be responsible for installation of additional measures within a year after construction of the street is accepted by the City if monitoring indicates that additional traffic control measures are needed.

**2. ASSIGNMENT OF ERROR 5(I)**

LUBA disagreed with the City's interpretation of the Development Code that would exempt properties with timber deferral status from filing a tree plan consisting of an inventory, removal plan, protection plan, and mitigation program. The text of their discussion follows:

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**I. Completeness and Adequacy of the Applicant's Tree Plan**

One section of the TCDC is entitled "Tree Removal." TCDC 18.790. We recently discussed this section of the TCDC at some length in *Miller v. City of Tigard*, 46 Or LUBA 536, 539-43 (2004). There are several sections of TCDC 18.790 that are relevant under this assignment of error.

**1. Tree Removal Permits**

TCDC.790.050 identifies circumstances where a permit is required from the city to remove a tree and identifies circumstances where a permit is not required to remove a tree.<sup>6</sup> Under TCDC 18.790.050(A), a city permit is required to remove any trees growing on sensitive lands. But under TCDC 18.790.050(A), no permit would be required from the city to remove the trees from the part of the subject property that falls outside the sensitive land area along the southern part of the property. TCDC 18.790.050(D)(4) appears to have been intended as a further qualification of the TCDC 18.790.050(A) requirement for a permit to remove trees on sensitive lands. But if TCDC 18.790.050(D) was intended to qualify TCDC 18.790.050(A), the final clause of TCDC 18.790.050(D)(4) renders the exemption inapplicable in the only circumstance it could apply, *i.e.*, where land in Christmas tree or forest tax deferral is on sensitive lands. The TCDC 18.790.050(D)(4) exemption is unnecessary for trees that are not located on sensitive lands, because TCDC 18.790.050(A) does not require a permit to remove such trees in the first place.

In summary, as far as we can tell, the applicant could remove all of the trees from the portion of the property that the applicant proposes to develop, without violating TCDC 18.790.050(A). That is because those

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<sup>6</sup>As relevant, TCDC 790.050 provides:

"A. Removal permit required. Tree removal permits shall be required only for the removal of any tree which is located on or in a sensitive land area as defined by Chapter 18.775.

"\* \* \* \* \*

"D. Removal permit not required. A tree removal permit shall not be required for the removal of a tree which:

"\* \* \* \* \*

"4. Is used for Christmas tree production, or [stands on] land registered with the Washington County Assessor's office as tax-deferred tree farm or small woodlands, but does not stand on sensitive lands."

trees are not located on sensitive lands, and TCDC 18.790.050(A) does not require a permit to remove trees unless those trees are located on sensitive lands.

## 2. The Tree Plan Requirement

TCDC 18.790.030 requires that a tree plan be provided when property is developed.<sup>7</sup> The precise nature of the obligation to protect trees through a tree plan is somewhat ambiguous. TCDC 18.790.030(A) states "[p]rotection is preferred over removal wherever possible." [See footnote 7]. But TCDC 18.790.010(C) expressly recognizes that trees may need to be removed to develop property,<sup>8</sup> and TCDC 18.790.030(B)(2) anticipates that more than 75% of the trees on a site may be removed to accommodate development, subject to mitigation requirements. [See footnote 7]. In addition to the somewhat ambiguous preference for preserving trees, the city also relies on a series of incentives for tree preservation, which are set out in TCDC 18.790.040.

## 3. Petitioner's Arguments

Petitioner challenges the adequacy of the applicant's tree protection plan. The focus of petitioner's challenge is on the part of the subject property that is to be developed, where most of the trees will be removed. It is not clear to what degree petitioner's arguments challenge the adequacy part of the plan that applies to the sensitive lands, where almost all of the trees are to be preserved. But petitioner's argument includes an overriding complaint that the applicant's tree protection plan evolved significantly over the course of the local proceedings and that it is difficult or impossible to determine with any degree of certainty precisely what the tree protection plan is.

The city and intervenor do not really respond to petitioner's arguments that the tree protection plan that the applicant submitted and the city ultimately approved is inadequate to comply with a number of particular requirements of TCDC 18.390.030. (emphasis added) Instead they rely on city council findings that no tree protection plan is required at all for the part of the property that lies outside the sensitive lands part of the property and that the plan to protect nearly all the trees on the sensitive lands is sufficient to comply with TCDC 18.390.030. We turn to those findings.

<sup>7</sup>TCDC 18.790.030 provides:

- "A. Tree plan required. A tree plan for the planting, removal and protection of trees prepared by a certified arborist shall be provided for any lot, parcel or combination of lots or parcels for which a development application for a subdivision, partition, site development review, planned development or conditional use is filed. Protection is preferred over removal wherever possible.
- "B. Plan requirements. The tree plan shall include the following:
- "1. Identification of the location, size and species of all existing trees including trees designated as significant by the city;
  - "2. Identification of a program to save existing trees or mitigate tree removal over 12 inches in caliper. Mitigation must follow the replacement guidelines of Section 18.790.060D, in accordance with the following standards and shall be exclusive of trees required by other development code provisions for landscaping, streets and parking lots:
    - "a. Retention of less than 25% of existing trees over 12 inches in caliper requires a mitigation program in accordance with Section 18.790.060D of no net loss of trees;
    - "b. Retention of from 25% to 50% of existing trees over 12 inches in caliper requires that two-thirds of the trees to be removed be mitigated in accordance with Section 18.790.060D;
    - "c. Retention of from 50% to 75% of existing trees over 12 inches in caliper requires that 50 percent of the trees to be removed be mitigated in accordance with Section 18.790.060D;
    - "d. Retention of 75% or greater of existing trees over 12 inches in caliper requires no mitigation.
  - "3. Identification of all trees which are proposed to be removed;
  - "4. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction. \* \* \*

<sup>8</sup>TCDC 18.790.010(C) provides:

"Recognize need for exceptions. The City recognizes that, \* \* \* at the time of development it may be necessary to remove certain trees in order to accommodate structures, streets utilities, and other needed or required improvements within the development."

#### 4. The City's Findings

Simply stated the city council found that a tree protection plan is not required for the part of the subject property where the applicant proposes to develop houses, notwithstanding the express requirement in TCDC 18.390.030 that a tree plan must be provided "for any lot, parcel or combination of lots or parcels for which a development application for a subdivision \* \* \* [or] planned development \* \* \* is filed." The city council reached this conclusion based in large part on the TCDC 18.390.050(D)(4) exemption for tree removal permits discussed above. The city council recognized that if TCDC 18.390.050 is read by itself, the TCDC 18.390.050(D)(4) exception serves no purpose, for the reasons we have already explained. To give TCDC 18.390.050(D)(4) some effect, the city council concluded it should be read to exempt proposals to develop lands that are not sensitive lands from the TCDC 18.390.030 requirements for a tree plan and for mitigation in certain circumstances. The fatal problem with that interpretation is that TCDC 18.390.050(D)(4) does not say anything about tree plans or mitigation; it is an unnecessary exception to the TCDC 18.390.050(A) requirement for a tree permit. We review a local governing body's interpretation of its land use regulations under the standard set out at ORS 197.829(1) and the Court of Appeals' decision in *Church v. Grant County*.<sup>9</sup> Even if interpreting TCDC 18.390.050(D)(4) in the way the city did here might have survived the more deferential standard of review that was required before *Church*, it cannot be affirmed under *Church*. Contrary to the city's argument, the city's interpretation does not merely clarify "the scope of the exemption" provided by TCDC 18.390.050(D)(4), it applies it to a tree plan requirement that it clearly does not apply to. The city council's interpretation is inconsistent with the express language of TCDC 18.390.050(D)(4).

The city council's policy reason for the interpretation it applied here presents only a slightly closer question. The city council concluded that no permit is necessary from the city to harvest trees outside sensitive lands. If the city is right about that, the applicant in this case could remove all of the trees in the area proposed for development and then submit the application, thereby avoiding any requirement to produce a tree plan for that area of the property. If that is true, there may be a loophole in the city's tree removal ordinance that in some circumstances may effectively eviscerate the TCDC 18.390.030 requirement for a tree plan and mitigation. Even if the applicant could take advantage of that loophole, as far as we know it has not done so, and the trees remain on the area of the property to be developed.

It is also important to note that the possibility that the applicant in this case could utilize the loophole to remove the trees before submitting an application does not render the requirement for a tree plan nonsensical. If the portions of a proposed development site that are not sensitive lands are not completely logged before development even though they could be logged, as will frequently be the case for a variety of reasons, there is nothing nonsensical about requiring a tree plan to protect those trees on lands to be developed, during and after the construction phase, and requiring mitigation for the trees that will be removed.

It may be that the tree plan that the applicant has proposed comes far closer to a tree plan for the entire property that complies with TCDC 18.390.030 than petitioner argues. However, without some assistance from the city and intervenor, we cannot conclude that the approved tree plan is consistent with TCDC 18.390.030. **We reject the city's attempt to interpret TCDC 18.390.030 with TCDC 18.390.050(D)(4) to conclude that no tree plan is required for the part of the site that does not qualify as sensitive lands. (Emphasis added)**

This subassignment of error is sustained.

#### ADDITIONAL FINDINGS AND ANALYSIS

<sup>9</sup>ORS 197.829(1) provides:

"[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- "(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- "(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- "(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."



In its decision, City Council interpreted its code to require a tree plan only in situations where the applicant was required to obtain a tree cutting permit to remove trees. The City reasoned that because the applicant in this case was not required to obtain a tree cutting permit for the majority of its site as it was in timber deferral, a tree plan for the entire site was not required. A tree plan was submitted for the balance of the site where sensitive lands were present.

LUBA rejected the City's interpretation. Accordingly, the applicant has submitted a tree plan encompassing the entire site and which includes all of the information required in TCDC 18.790.030. The City Forester has reviewed the plan and has agreed that it is acceptable, as noted in his Memorandum of January 24, 2005. The proposed attached tree plan and arborist's report establishes the trees to be saved and those to be cut. As reflected in that plan, there are 893 total trees on site that are larger than 12" diameter. Of those, 115 are deemed hazardous and are not subject to the mitigation requirement. From the remaining 778 net viable trees, 321 are proposed for removal. This constitutes a 59% retention. Since the total number of trees that will be retained is greater than 50%; one-half of the caliper inches being removed is required to be mitigated. A total of 6892 caliper inches are to be removed, so 3,446 caliper inches will be required to be replanted. This may be accomplished by either planting trees on-site, off-site or payment of a fee in lieu. To assure that mitigation is accomplished and that subsequent tree removals are undertaken in accordance with the requirements of this chapter, staff recommends that the following conditions be imposed:

**Recommended Conditions of Approval (#53 and #54):**

Prior to commencing site work, the applicant shall submit a bond for the equivalent value of mitigation required (3,446 number of caliper inches times \$125 per caliper inch). If additional trees are preserved through the subdivision improvements and construction of houses, and are properly protected through these stages by the same measures afforded to other protected trees on site, the amount of the bond may be correspondingly reduced. Any trees planted on the site or off site in accordance with 18.790.060 (D) will be credited against the bond, for two years following final plat approval. After such time, the applicant shall pay the remaining value of the bond as a fee in lieu of planting.

Prior to issuance of building permits, the applicant/owner shall record a deed restriction to the effect that any existing tree greater than 12" diameter may be removed only if the tree dies or is hazardous according to a certified arborist. The deed restriction may be removed or will be considered invalid if a tree preserved in accordance with this decision should either die or be removed as a hazardous tree.

### **3. ASSIGNMENT OF ERROR 5(J)**

LUBA found that the City erred in its decision to grant adjustments to the street improvement standards (number of units on a cul de sac, length of a cul de sac, and curb tight sidewalks on SW 74<sup>th</sup>) by not providing sufficient findings to respond to the adjustment criteria. The text of their discussion follows:

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#### **J. Special Adjustments**

The challenged decision grants an adjustment to street improvement sidewalk construction standards to allow a curb-tight sidewalk where SW 74<sup>th</sup> Avenue crosses the drainageway. The challenged decision also grants two adjustments to allow construction of the proposed cul-de-sac. Those adjustments allow the cul-de-sac to exceed 200 feet in length and to serve 23 houses.<sup>10</sup>

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<sup>10</sup>Under the TCDC, cul-de-sac streets may provide access to no more than 20 houses. The adjustment allows the cul-de-sac to serve 23 houses. Apparently the first 200 feet of the cul-de-sac will provide access to lots 1 and 2 and lots 20-23. The adjustment to the



The city council's decision does not apply the special adjustment criteria set out at TCDC 18.370.020(C)(11), even though the adjustments all appear to be directed at street improvement requirements.<sup>11</sup> Instead, the city council applied the special adjustment criteria at TCDC 18.370.020(C)(1).<sup>12</sup> No party questions that choice by the city, and we therefore do not question it either. The city's findings addressing the TCDC 18.370.020(C)(1)(a) requirement that there be special circumstances are set out below:

"\* \* \* The applicant is requesting an adjustment to the 5-foot planter strip along 74<sup>th</sup> Avenue to reduce 1,100 additional square feet of impact to the drainageway and wetland area. The applicant proposes this curb tight sidewalk for the special circumstance where the development is required to cross the stream. Outside the resource area, the sidewalk will meet the required public street standards.

"Due to the presence of the sensitive lands, the development width of the property makes a looped street unfeasible. Also, because of existing development patterns adjacent to the site, the cul-de-sac could not be extended to the site's east property line. The applicant was able to extend a new public street to the north property line for future connectivity. The length of the cul-de-sac is the primary reason to exceed the 20 home maximum standard on this private street. Because of the special circumstances affecting this property, this criterion has been satisfied." Record 30a.

The city council's findings explaining why the adjustments are necessary for proper design and functioning of the subdivision under TCDC 18.370.020(C)(1)(b) are as follows:

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200-foot length limitation is necessary to provide access to lots 3 through 19. Otherwise a loop road would be required and it would appear that such a loop road would almost certainly have to encroach on the wetland and drainage area that is protected under the proposed plan.

<sup>11</sup>TCDC 18.370.020(C)(11) provides:

"Adjustments for street improvement requirements (Chapter 18.810). By means of a Type II procedure, as governed by Section 18.390.040, the Director shall approve, approve with conditions, or deny a request for an adjustment to the street improvement requirements, based on findings that the following criterion is satisfied: Strict application of the standards will result in an unacceptably adverse impact on existing development, on the proposed development, or on natural features such as wetlands, steep slopes or existing mature trees. In approving an adjustment to the standards, the Director shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards."

<sup>12</sup>TCDC 18.370.020(C)(1) provides:

"Adjustments to development standards within subdivisions (Chapter 18.430): The Director shall consider the application for adjustment at the same time he/she considers the preliminary plat. An adjustment may be approved, approved with conditions, or denied provided the Director finds:

- "a. There are special circumstances or conditions affecting the property which are unusual and peculiar to the land as compared to other lands similarly situated;
- "b. The adjustment is necessary for the proper design or function of the subdivision;
- "c. The granting of the adjustment will not be detrimental to the public health, safety, and welfare or injurious to the rights of other owners of property; and
- "d. The adjustment is necessary for the preservation and enjoyment of a substantial property right because of an extraordinary hardship which would result from strict compliance with the regulations of this title."

The adjustment criteria at TCDC 18.370.020(C)(1) in some respects resemble traditional variance criteria, which are exceedingly difficult to satisfy. *Lovell v. Independence Planning Comm.*, 37 Or App 3, 586 P2d 99 (1978); *Wentland v. City of Portland*, 22 Or LUBA 15, 24-26 (1991); *Patzkowski v. Klamath County*, 8 Or LUBA 64, 70 (1983). However as the Court of Appeals made clear in *deBardelaben v. Tillamook County*, 142 Or App 319, 325-26, 922 P2d 683 (1996), LUBA is to extend appropriate deference to the city's interpretations of its own adjustment criteria. Under *Church v. Grant County*, the city is not entitled to the highly deferential standard of review that was required at the time *deBardelaben* was decided, but it still is entitled to appropriate deference under ORS 197.829(1) and *Church*.

"The adjustment request for the curb tight sidewalk is necessary to reduce impacts to the drainageway and wetlands. The adjustment for the cul-de-sac length is necessary to provide access to Lots 3-19 and to allow a turn around for emergency equipment and garbage trucks. The adjustment to allow more than 20 units to access the cul-de-sac is a result of both the length of the resulting cul-de-sac, and the desire to eliminate the need for a second redundant access serving three lots. Providing this second access would have reduced the amount of area available for buildings, with the result of eliminating the lots being served by it. Therefore, this criterion is satisfied." Record 30a-31.

The city council's finding regarding the TCDC 18.370.020(C)(1)(c) public health safety and welfare criterion is as follows:

"The Fire District has reviewed the proposed street design and has provided no objections to these adjustments. There is no evidence that these adjustments will be detrimental to the health safety or welfare to other property owners surrounding the site." Record 31.

Finally, the city council's finding regarding the TCDC 18.370.020(C)(1)(d) extraordinary hardship standard is as follows:

"Due to existing development patterns, the natural resources, and the shape of the site, the adjustment is necessary for the applicant to make use of substantial property rights. The applicant is proposing to build within the density prescribed for this site. The criteria for granting these adjustments to the street design, cul-de-sac length, and sidewalk standards have been satisfied." *Id.*

Petitioner assigns error to the city's findings concerning the TCDC 18.370.020(C)(1)(c) public health safety and welfare criterion and the TCDC 18.370.020(C)(1)(d) extraordinary hardship standard. We have set out the other city findings, on the first two criteria, because they have some bearing on the last two criteria.

Petitioner first contends that, contrary to the city's finding that there is no evidence that these adjustments will be "detrimental to the health safety or welfare to other property owners surrounding the site," there is a great deal of evidence to that effect. The city appears to be correct that some of the evidence cited by petitioner relates more to the development itself rather than the three adjustments that are at issue under this subassignment of error. **However, some of the evidence cited by petitioner clearly does address this criterion, and the city's finding that there is no such evidence is in error.** (Emphasis added) This part of subassignment of error 5(J) is sustained.

Petitioner also argues the city's finding that the adjustments are needed to preserve a substantial property right due to extraordinary hardship that would result from strict compliance with the adjusted standards are inadequate and are not supported by the evidentiary record.

Reading the city's findings concerning TCDC 18.370.020(C)(1)(a) and (d) together, we reject petitioners challenge to the findings regarding the cul-de-sac adjustments under TCDC 18.370.020(C)(1)(d). It is reasonably clear from those findings that if the applicant were forced to provide access to the proposed lots without the adjustments, much more of the property would have to be developed with roads, at a significant additional expense and with the potential loss of lots that would otherwise be approvable. It is reasonably clear that the city considers those impacts to constitute a hardship. We cannot say the city misinterpreted TCDC 18.370.020(C)(1)(d) or that its findings are inadequate to demonstrate that the cul-de-sac adjustments comply with that criterion.

The city's findings concerning TCDC 18.370.020(C)(1)(d) and the curb tight sidewalk are a different story. Although it appears that granting the adjustment would serve the desirable purpose of minimizing fill in

the wetland and drainage area, the city does not explain why it would be a hardship on the applicant to construct a conforming sidewalk.<sup>13</sup>

To summarize, the city's findings concerning TCDC 18.370.020(C)(1)(c) are inadequate for all three adjustments. The city's findings concerning TCDC 18.370.020(C)(1)(a) and (d) are sufficient to demonstrate that the cul-de-sac adjustments comply with TCDC 18.370.020(C)(1)(d). The city's findings concerning TCDC 18.370.020(C)(1)(d) are inadequate to demonstrate that the curb tight sidewalk adjustment satisfied that criterion.

## **ADDITIONAL FINDINGS AND ANALYSIS**

The City Council addressed the applicant's requested adjustment request under TCDC 18.370.020(C)(1), which is a general adjustment standard and not under TCDC 18.370.020(C)(11), which is specific to street improvements. The applicant has acknowledged that in its application material it too addressed the requested adjustments under the general standard as opposed to the specific standard. In its decision, LUBA concluded that the City's findings related to the health safety and welfare impacts of the three adjustments were insufficient. LUBA also concluded that the extraordinary hardship criterion to allow the curb tight sidewalk had not been sufficiently addressed. Staff asserts that the adjustment for the curb tight sidewalk was not necessary based on the strict criteria in Chapter 18.810, and provides findings for such a conclusion below. Nevertheless, the applicant has provided additional findings related to both the general adjustment standard as well as the specific street adjustment criteria. Staff agrees that the specific criteria related to street improvements are more appropriate to this decision than the more general criteria. Staff therefore believes that the specific criteria of TCDC 18.810.070(C), and 18.370.020(C)(11) apply rather than the general criteria of TCDC 18.370.020(C)(1). In the event that the Council or a reviewing entity take the position that the general criteria apply, findings relating to those criteria are also provided.

### **Planter Strip Requirement 18.810.070 (C)**

A planter strip separation of at least five feet between the curb and the sidewalk shall be required in the design of streets, except where the following conditions exist: there is inadequate right-of-way; the curbside sidewalks already exist on predominant portions of the street; it would conflict with the utilities, there are significant natural features (large trees, water features, etc) that would be destroyed if the sidewalk were located as required, or where there are existing structures in close proximity to the street (15 feet or less). Additional consideration for exempting the planter strip requirement may be given on a case by case basis if a property abuts more than one street frontage.

There is adequate right of way to accommodate the required planter strip, and sidewalks do not yet exist on predominant portions of the street. There are some potential conflicts with utilities, but not on the side where the planter strip is required. There are also no existing structures that would be in such close proximity to the new sidewalk. However, additional large trees and water features would be destroyed if the sidewalk were required to be moved five feet further east into the sensitive lands resource. Staff interprets the term "destroyed" to mean that additional trees would be removed, and additional area within the sensitive resource area would be disturbed by grading activity, vegetation removal and possible stream bank rechanneling. Although it is acknowledged that in some instances, these areas can be restored by the planting of new trees, or through revegetation and redirection of

<sup>13</sup>We note that there is no extraordinary hardship criterion like TCDC 18.370.020(C)(1)(d) in the special adjustment criteria for street improvement standards at TCDC 18.370.020(C)(11). See n 48. However, as previously noted, the city applied the special adjustment criteria at TCDC 18.370.020(C)(1) rather than the TCDC 18.370.020(C)(11) criteria.

the stream channel, it is the general preference and the expressed intent of this exemption to avoid the impact in the first place.

### **Specific Adjustment Criteria 18.370.020(C)(11)**

"Strict application of the standards will result in an unacceptably adverse impact on existing development, on the proposed development, or on natural features such as wetlands, steep slopes or existing mature trees. In approving an adjustment to the standards, the Director shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards."

#### *Findings for Length of Cul de Sac (TCDC 18.810.030(L))*

Strict application of the 200 foot limitation on cul de sac length would result in an unacceptable adverse impact on the proposed development and natural features for the following reasons. Preexisting development surrounds a majority of the site to the north and east. Ash Creek cuts across the property from the southeast to the northwest. The only undeveloped area borders the 968 foot deep site for the first 490 feet. The last 478 feet could either be served by a long cul de sac, or a loop street. A loop street could not return to SW 74<sup>th</sup> without a high degree of encroachment into the stream and wetland resource. This near doubling of pavement would serve no additional units, and would likely result in the loss of the two lots on the south side of the stream. The other possible option would be to propose a street that would extend through the developed properties and ultimately connect with an adjacent public street. This would have adverse impacts upon existing development however. As described previously, there are no impacts to the public health safety or welfare from granting such an adjustment, so it follows that the impacts raised here exceed any benefit to the public from a strict adherence to this standard.

#### *Findings for Number of Units served By a Cul de Sac*

Strict application of the 20 unit maximum limitation on a cul de sac would result in an unacceptable adverse impact on the proposed development and natural features for the following reasons. Similar to the findings for the length of the cul de sac, it follows that with a cul de sac of this length, the number of units served by it will exceed the maximum allowed. In this case, there are three additional units on the private cul de sac. By strictly complying with this standard, the applicant would either have to lose three lots, an adverse impact on the proposed development, or reconfigure the through public street to accommodate the three additional units. Staff examined the future streets plan to assess what impact would result if the public street in Ash Creek Estates were extended to encompass the three additional lots presently on the cul de sac. Staff found that if the street were extended to encompass the three additional units, the extension of the public street north would either not align with SW Shady Place (thus requiring an adjustment to street spacing) or would not meet geometric curve requirements to make the alignment (thus requiring an adjustment to street improvement standards), or would need to terminate in a second cul de sac (thus requiring further adjustments to cul de sac length and number of units served). As noted previously, staff found that safety will not be impacted by the three additional units as the cul de sac street and intersection is in all other manners conforming with design requirements and capable of handling the additional vehicle trips. Also, TVF&R has determined that length does not affect safety with respect to the number of lots to be served by a cul-de-sac. The public welfare is moreover unaffected by the three additional houses on this cul de sac since the standard is intended to limit the use of lengthy culs-de sac and promote connectivity and transportation options. In this case, there are no available points to connect to, apart from what is already proposed by the future street plan. The existing development pattern and presence of resources prevent the development from complying with the block length standards. Accordingly, there are only two options to access the eastern lots in the proposed subdivision: one is a cul-de-sac and one is a looped street within the subdivision. A looped street would have to be constructed in environmentally sensitive land and would require significant excavation and/or fill.

With the proposed cul de sac, preservation of the stream bed and stormwater conveyance system will be achieved. This will serve to benefit the general welfare of the public at large. Therefore, staff finds that the potential adverse impacts exceed the public benefits of strict application of the standards.

*Findings for Curb Tight Sidewalk TCDC 18.810.030(L)*

Strict application of the 5 foot wide planter strip requirement would result in an unacceptable adverse impact on the proposed development and natural features for the following reasons. If a 5-foot planter strip was required, then an approximate 1,100 additional square feet of impact to the drainageway and wetland areas would occur. While this would not have an adverse impact on existing development, it would have some impact to the proposed development in terms of additional landform disturbance and cost. This would also certainly have an additional adverse impact to existing natural features including the stream, wetlands, and likely additional trees. The public benefit of a planter strip is the additional aesthetic amenity of breaking the hardscape mass. The presence of the large open stream channel behind the road and sidewalk will serve a similar purpose. Therefore, staff finds that the potential adverse impacts exceed the public benefits of strict application of the standards.

**General Adjustment Criteria 18.370.020(C)(1)**

"c. The granting of the adjustment will not be detrimental to the public health, safety, and welfare or injurious to the rights of other owners of property"

*Findings for Length of Cul de Sac (TCDC 18.810.030(L))*

Granting the requested adjustment will not be detrimental to the public health, safety and welfare of the public. Nor will it be injurious to the rights of other property owners.

The length of a cul-de-sac is a planning issue related to an attempt to geometrically control block sizes from becoming too long. This standard allows continuity of blocks without having long dead-end streets affecting block sizes. The applicant's engineer has evaluated this issue as part of a team whose responsibility it is to evaluate the methods set by Metro to control block geometry to increase connectivity. By limiting the length of cul de sacs, developers are encouraged to provide more through streets, thereby enhancing connectivity. This enhanced welfare is balanced by increased through traffic which may disturb residents. From a safety standpoint, culs-de-sac are vulnerable from the standpoint of only having one available ingress/egress. In certain situations, this access could become blocked preventing residents access to or from their homes. This is also balanced from a public safety perspective by the fact that culs-de-sac are more defensible spaces from burglary, and are generally less prone to break-ins and vandalism. The length of a cul de sac has no bearing on public health. Additionally, neither the Tigard Police nor TVF&R raised any safety concerns over the length of the proposed cul-de-sac. Extending the length of the cul-de-sac reduces the number of intersections and the safety risks associated with intersections.

Opponents testified generally that the adjustments allowing a longer cul-de-sac that would serve more than 20 residences would increase the amount of traffic and nearby streets and then concluded with no further evidence that an increase in traffic will automatically result in decreased safety. The City finds that the amount of traffic is a function of the number of proposed units, not the arrangement of streets. It may be the case that more traffic will use the single point of access, than if there were two entries into the street, but the net difference from a conforming cul de sac is approximately 30 trips per day (see the following findings related to 3 extra units on the cul de sac). This limited number of additional vehicles that will result from the adjustments as opposed to the development itself will not automatically result in decreased safety as the streets within and adjacent to the proposed subdivision are capable of handling the full amount of traffic from this development.

Moreover, when the property to the north is developed, a new street will connect to the proposed subdivision and serve to offset the traffic impact at SW 74<sup>th</sup> and the Ash Creek Estates public street intersection.

#### *Findings for Number of Units served By a Cul de Sac*

In examining the detrimental impacts to the public health, safety, and welfare, it is important to consider that a conforming cul de sac is limited to 20 units. The subject application represents an increase of 3 units. Many of the findings presented previously with regard to the length of the cul de sac are still relevant to these findings. However this request will result in a net increase of approximately 30 vehicle trips per day moving through the intersection of the public street and private cul de sac. There has been no evidence to suggest that the public health will be impacted by this additional traffic, as the total number of units is still within the permitted range of density on the site. In evaluating injury to the rights of other owners of property, the only adjacent property that may be affected by the proposed addition of 3 lots on the cul de sac is tax lot 200 (immediately north of the subject site). Staff examined the future streets plan to assess what impact would result if the public street in Ash Creek Estates were extended to encompass the three additional lots presently on the cul de sac. Staff found that if the street were extended to encompass the three additional units, the extension of the public street north would either not align with SW Shady Place (thus requiring an adjustment to street spacing) or would not meet geometric curve requirements to make the alignment (thus requiring an adjustment to street improvement standards), or would need to terminate in a second cul de sac (thus requiring adjustments to cul de sac length and number of units served). With the requested adjustment, the property rights of the adjacent owner are preserved. Staff found that safety will not be impacted by the three additional units as the cul de sac street and intersection is in all other manners conforming with design requirements and capable of handling the additional vehicle trips. Also, TVF&R has determined that length does not affect safety with respect to the number of lots to be served by a cul-de-sac. TVF&R makes the determination of whether the number of lots poses a safety concern. According to Eric McMullin, TVF&R requires two (2) accesses for safety when more than 25 residential houses are on a street. Here, that standard is met because only 23 houses will be served. The public welfare is moreover unaffected by the three additional houses on this cul de sac since the standard is intended to limit the use of lengthy culs-de sac and promote connectivity and transportation options. In this case, there are no available points to connect to, apart from what is already proposed by the future street plan. The existing development pattern and presence of resources prevent the development from complying with the block length standards. However, where the block length standards incorporated an exemption for these types of constraints, the cul de sac standards did not. Moreover, due to these prior development patterns, there is no way to connect the private street serving the lots to adjacent streets. Accordingly, there are only two options to access the lots in the proposed subdivision: one is a cul-de-sac and one is a looped street within the subdivision. A looped street would have to be constructed in environmentally sensitive land and would require significant excavation and/or fill. With the proposed cul de sac, preservation of the stream bed and stormwater conveyance system will be achieved. This will serve to benefit the general welfare of the public at large. Therefore, staff finds no basis to determine any detriment will occur to the public health, safety, or welfare nor does staff find that there is any injury to neighbors as a result of allowing the three additional units on this cul de sac. No additional conditions are warranted in this case.

#### *Findings for Curb Tight Sidewalk TCDC 18 810 030(L)*

Curb tight sidewalks in the area proposed will not be detrimental to the public health, safety and welfare or injurious to the rights of other property owners. (The curb tight sidewalk can be considered safe because the area behind the sidewalk has a flat spot which allows pedestrians to keep to the outside while walking.) Curb tight sidewalks are used often and are an alternate location in many

similar public streets throughout the city. This is not a safety concern. Instead, this detail is used where only a few curb cuts are proposed. Planting strips provide for street furniture and places to put mailboxes, power poles, streetlights, telephone pedestals, and power pedestals. This area does not have many of these features. In addition, as discussed above, the traffic in the area of the proposed adjustment will be traveling relatively slowly due to the topography of the road. With a normal sized sidewalk, there will not be pedestrian/vehicle conflicts. The curb-tight sidewalks result in less impact to the stream, and a healthy environment contributes to public health.

"c. The adjustment is necessary for the preservation and enjoyment of a substantial property right because of an extraordinary hardship which would result from strict compliance with the regulations of this title.

#### *Findings for Curb Tight Sidewalk TCDC 18 810 030(L)*

Without granting the adjustment, the applicant would be required to amend the Division of State Lands and Army Corps joint wetland permit. One aspect these agencies seek in wetland fill/encroachment permits is minimization of disturbance to the resource. It is conjecture to speculate that the applicant would not be able to obtain such an amendment to their permit; however, it is important to consider the possibility. Without the DSL/Army Corps approval, the project would not be allowed to proceed, depriving the applicant of the ability to develop the property at the allowed density. The other hardship that would be encountered is the additional cost associated with either additional fill, or larger retaining walls. Since the value of the exaction for the roadway stream crossing is already disproportionate, additional costs placed on this crossing result in an exceeding hardship on the applicant. The applicant would therefore be denied the rights to develop his property within the normal limits of takings law.

As the findings for granting the adjustments have been met, no additional conditions of approval are warranted.

#### **4. ASSIGNMENT OF ERROR 5(K)**

Lastly, LUBA found that since there had been no tree plan filed to establish the methods and extent of tree protection requirements, it was premature to determine whether sufficient protection had been afforded to plant materials. The text of their discussion follows:

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#### **K. Landscaping**

One of the specific planned development criteria is TCDC 18.350.100(B)(3)(g)(1).<sup>14</sup> Petitioner contends that the city erred in counting the 44 percent of the site that will be included in the open space and drainage tract on the site, which will be left in its current undeveloped state, in applying the TCDC 18.350.100(B)(3)(g)(1) landscaping requirement. Petitioner contends that TCDC 18.350.100(B)(3)(g)(1) requires more proactive landscaping efforts on the part of the applicant.

The city's interpretation of TCDC 18.350.100(B)(3)(g)(1) to allow the open space area that is to be left in its natural state to be counted toward the TCDC 18.350.100(B)(3)(g)(1) 20% landscaping requirement is implicit. Record 29. The city contends that it is a sustainable interpretation under ORS 197.829(1) and *Church*. We agree with the city.

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<sup>14</sup>TCDC 18.350.100(B)(3)(g)(1) imposes the following requirement:

Residential Development: In addition to the requirements of subparagraphs (4) and (5) of section a of this subsection, a minimum of 20 percent of the site shall be landscaped[.]”



Petitioner also cites TCDC 18.745.030(E) and TCDC 18.350.100(B)(3)(a)(5) and argues that the applicant's landscape plan fails to protect existing vegetation "as much as possible" or replace trees.<sup>15</sup> **The city does not respond to petitioner's contention concerning preservation of vegetation during construction under TCDC 18.745.030(E).** Accordingly, we sustain that part of subassignment of error 5(K). (Emphasis added). Petitioner's contention regarding TCDC 18.350.100(B)(3)(a)(5) is not clear. We have already sustained petitioner's subassignment of error 5(I). Until that deficiency is considered by the city on remand, it is premature to consider whether there is any obligation to replace any trees in the area to be developed, beyond the replacement trees that are already proposed.

This subassignment of error is sustained in part.

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## **ADDITIONAL FINDINGS AND ANALYSIS**

LUBA had found that since the applicant had not prepared a tree plan, there was inadequate evidence to evaluate the petitioner's claim that vegetation was not being protected. The applicant has submitted the required tree plan, including a protection program. Apart from the areas that will be disturbed to construct the infrastructure (sewer, water, storm drainage, streets, etc.) and the lots that will be graded for soil stability and proper drainage, the remainder of the site will be required to be protected from disturbance. The applicant will be required to erect protection fencing around each tree or group of trees to be retained. To ensure that the remaining vegetation is protected as much as possible, the following conditions should be required.

### **Recommended Conditions of Approval (#55, 56, 57, 58):**

Prior to commencing any site work, the applicant shall submit construction drawings that include the approved Tree Removal, Protection and Landscape Plan. The "Tree Protection Steps" identified in Teragan & Associates Letter of November 19, 2004 shall be reiterated in the construction documents. The plans shall also include a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving. Only those trees identified on the approved Tree Removal plan are authorized for removal by this decision.

Prior to commencing any site work, the applicant shall establish fencing as directed by the project arborist to protect the trees to be retained. The applicant shall allow access by the City Forester for the purpose of monitoring and inspection of the tree protection to verify that the tree protection measures are performing adequately. Failure to follow the plan, or maintain tree protection fencing in the designated locations shall be grounds for immediate suspension of work on the site until remediation measures and/or civil citations can be processed.

Prior to final plat approval, the applicant shall ensure that the Project Arborist has submitted written reports to the City Forester, at least, once every two weeks, from initial tree protection zone (TPZ) fencing installation, through site work, as he monitors the construction activities

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<sup>15</sup>TCDC 18.745.030(E) provides:

"Protection of existing vegetation. Existing vegetation on a site shall be protected as much as possible.

"1. The developer shall provide methods for the protection of existing vegetation to remain during the construction process; and

"2. The plants to be saved shall be noted on the landscape plans (e.g., areas not to be disturbed can be fenced, as in snow fencing which can be placed around individual trees).

TCDC 18.350.100(B)(3)(a)(5) provides:

"Trees preserved to the extent possible. Replacement of trees is subject to the requirements of Chapter 18.790, Tree Removal."



and progress. These reports should include any changes that occurred to the TPZ as well as the condition and location of the tree protection fencing. If the amount of TPZ was reduced then the Project Arborist shall justify why the fencing was moved, and shall certify that the construction activities to the trees did not adversely impact the overall and long-term health and stability of the tree(s). If the reports are not submitted or received by the City Forester at the scheduled intervals, and if it appears the TPZ's or the Tree Protection Plan is not being followed by the contractor, the City shall stop work on the project until an inspection can be done by the City Forester and the Project Arborist. This inspection will be to evaluate the tree protection fencing, determine if the fencing was moved at any point during construction, and determine if any part of the Tree Protection Plan has been violated.

Prior to issuance of building permits, the applicant shall submit site plan drawings indicating the location of the trees that were preserved on the lot, location of tree protection fencing, and a signature of approval from the project arborist regarding the placement and construction techniques to be employed in building the house. All proposed protection fencing shall be installed and inspected prior to commencing construction, and shall remain in place through the duration of home building. After approval from the City Forester, the tree protection measures may be removed.

## **SECTION VII. CONCLUSION**

In conclusion, the City asserts that the applicant has adequately responded to the errors identified by LUBA, and has supplemented the record with additional information and evidence with which to evaluate the findings. Staff concurs with the applicant on these findings, and has recommended several additional conditions of approval to ensure that these standards and practices are implemented as part of this final decision. Staff therefore recommends approval of the Ash Creek Estates Subdivision, case file SUB2003-00010/ ZON2003-00003/ PDR2003-00004/ SLR2003-00005/ VAR2003-00036/ VAR2003-00037.

PREPARED BY: Morgan Tracy  
Associate Planner

January 25, 2005  
DATE

APPROVED BY: Dick Bewersdorff  
Planning Manager

January 25, 2005  
DATE

## CITY OF TIGARD, OREGON

RESOLUTION NO. 03-61

A RESOLUTION TO AMEND RESOLUTION 03-58, APPROVING THE ASH CREEK ESTATES PLANNED DEVELOPMENT, TO CORRECT THE REFERENCED DATE OF THE APPLICANT'S LETTER ESTABLISHING THE CONDITIONS OF APPROVAL.

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WHEREAS, the Planning Commission reviewed the Ash Creek Estates Planned Development proposal at a public hearing at its meeting of July 7, 2003; and

WHEREAS, the Planning Commission made motions to both deny and approve the application, both of which failed in a 4-4 tie vote; and

WHEREAS, the by-laws of the Planning Commission and Robert's Rules of Order specify that if an affirmative vote in favor of an application is not attained, the application is denied. Since the denial occurred de facto, no findings were adopted, and the denial is without prejudice; and

WHEREAS, the City Council held a public hearing on the appeal of the denial on August 12, 2003 which was continued to September 9, 2003 to take additional testimony; and

WHEREAS, the City Council reviewed the testimony, submittals, and staff report on August 12, 2003 and September 9, 2003, and reviewed findings and conditions of approval that were prepared by the applicant, Winwood Construction, on October 28, 2003; and

WHEREAS, the City Council concluded that the proposed development with the conditions of approval as prepared by the applicant, would be in compliance with all applicable decision criteria; and

WHEREAS, the City Council adopted a resolution approving the Ash Creek Estates Subdivision that included a reference to Exhibit A, the applicant's letter dated September 26, 2003, where the correct date of that letter and Exhibit as included with the previous resolution was in fact October 10, 2003, and Council wishes that the record reflect the accurate date;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council approves applications SUB2003-00010/PDR2003-00004/ZON2003-00003/SLR2003-00005/VAR2003-00036/VAR2003-00037 - Ash Creek Estates Subdivision, subject to the conditions of approval stated in the letter dated October 10, 2003, from Steve Kay of Kurahashi Associates to the City of Tigard, attached with Resolution 03-58 and incorporated herein by this reference.

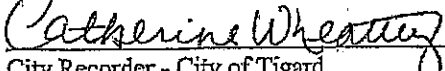
SECTION 2: The Tigard City Council adopts the findings stated in the Staff Report to the Planning Commission, attached with Resolution 03-58 (as Exhibit B) and incorporated herein by this reference. The Council further adopts the findings stated in the applicant's October 10<sup>th</sup>, 2003 letter, attached with Resolution 03-58 (as Exhibit A) and incorporated herein by this reference.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 4<sup>th</sup> day of November 2003.

  
Mayor - City of Tigard

ATTEST:

  
City Recorder - City of Tigard

## CITY OF TIGARD, OREGON

RESOLUTION NO. 03- 58

A RESOLUTION AND FINAL ORDER APPROVING THE ASH CREEK ESTATES SUBDIVISION (SUBDIVISION (SUB) 2003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ZONE CHANGE (ZON) 2003-00003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ADJUSTMENT (VAR) 2003-00036/ADJUSTMENT (VAR) 2003-00037), ADOPTING FINDINGS AND IMPOSING CONDITIONS.

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WHEREAS, the Planning Commission reviewed this case at a public hearing at its meeting of July 7, 2003; and

WHEREAS, the Planning Commission made motions to both deny and approve the application, both of which failed in a 4-4 tie vote; and

WHEREAS, the by-laws of the Planning Commission and Robert's Rules of Order specify that if an affirmative vote in favor of an application is not attained, the application is denied. Since the denial occurred de facto, no findings were adopted, and the denial is without prejudice; and

WHEREAS; the City Council held a public hearing on the appeal of the denial on August 12, 2003 which was continued to September 9, 2003 to take additional testimony; and

WHEREAS, the City Council reviewed the testimony, submittals, and staff report on August 12, 2003 and September 9, 2003, and reviewed findings and conditions of approval that were prepared by the applicant, Winwood Construction, on October 28, 2003; and

WHEREAS, the City Council concluded that the proposed development with the conditions of approval as prepared by the applicant, would be in compliance with all applicable decision criteria;


NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council approves applications SUB2003-00010/PDR2003-00004/ZON2003-00003/SLR2003-00005/VAR2003-00036/VAR2003-00037 - Ash Creek Estates Subdivision, subject to the conditions of approval stated in the letter dated September 26, 2003, from Steve Kay of Kurahashi Associates to the City of Tigard, attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2: The Tigard City Council adopts the findings stated in the Staff Report to the Planning Commission, attached hereto as Exhibit B and incorporated herein by this reference. The Council further adopts the findings stated in the above-referenced Exhibit A.

SECTION 3: This resolution is effective when notice of the decision is mailed.

PASSED: This 28<sup>th</sup> day of October 2003.

  
\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:


  
\_\_\_\_\_  
City Recorder - City of Tigard

Exhibit A

Steve Kay  
Kurahashi and Associates  
15580 SW Jay Street, Ste 200  
Beaverton, OR 97006

October 10, 2003

City of Tigard  
City Council Members  
13125 SW Hall Blvd.  
Tigard, OR 97223

**Re: Findings For Ash Creek Estates Subdivision, SUB2003-00010**

Dear City Council Members:

On September 9, 2003, the City Council approved the application for the Ash Creek Estates Subdivision, SUB2003-00010. On behalf of the applicant, Windwood Construction, we are submitting findings that demonstrate how the applicant has met the approval criteria identified in the Staff Report. Applicable development criteria, responses to those criteria, and additional suggested Conditions of Approval are provided below.

## **APPLICABLE REVIEW CRITERIA AND FINDINGS:**

### **CHAPTER 18.350: PLANNED DEVELOPMENTS**

#### **The Planned Development Process:**

Section 18.350.030 states that there are three elements to the planned development approval process, as follows:

- The approval of the planned development overlay zone;
- The approval of the planned development concept plan; and
- The approval of the detailed development plan.

**Findings:** As required, the applicant has followed the Planned Development process for this application. This application has been submitted for approval of the planned development overlay zone, concept plan, and detailed plan.

#### **Applicability of the Base Zone Standards:**

Section 18.350.070 requires compliance to specific development standards: The provisions of the base zone are applicable as follows:

#### **Lot dimensional standards:**

The minimum lot size, lot depth and lot width standards shall not apply except as related to the density computations under Chapter 18.715;

**Findings:** As allowed under the planned development process, the applicant has requested smaller lot sizes than required by the R-4.5 zone. Proposed lot widths are 50 feet or wider and lot depths are 68-153 feet deep. As required by the Conditions of Approval, the applicant will be required to modify Lot 29 so that it meets frontage standards. The applicant has met the density requirements as discussed later in these findings.

**Site coverage:**

**The site coverage provisions of the base zone shall apply;**

**Findings:** The R-4.5 zone does not have site coverage requirements, therefore this standard does not apply.

**Building height:**

**The building height provisions shall not apply;**

**Findings:** The applicant has not proposed an alternative height standard with this application, therefore the application is subject to the standards of the base zone.

**Structure setback provisions:**

**Front yard and rear yard setbacks for structures on the perimeter of the project shall be the same as that required by the base zone unless otherwise provided by Chapter 18.360;**

**Findings:** The applicant has met this standard by submitting a site plan illustrating building envelopes within the development. Perimeter setbacks are as required by the base zone, and are further described as a 15-foot rear yard setback on Lots 1-13, a 20-foot front yard setback for Lots 24-27, and a 10-foot south side yard for Lot 29, a flag lot. In the interior of the site, the applicant proposes an 8-foot front yard setback to primary structures and porches. Setbacks to the face of the garage is proposed to remain at 20 feet from the front property line of Lots 12-26. Setbacks to the garage on Lots 1-11 are proposed to be 22.5 feet, where sidewalks are 4.5 feet on to those lots.

**The side yard setback provisions shall not apply except that all detached structures shall meet the Uniform Building Code (UBC) requirements for fire walls;**

**Findings:** The applicant proposed to reduce the side yard setback from 5 to 3 feet, which is the minimum separation required for UBC compliance. No projections including bay windows or chimneys, shall be allowed into the side areas. Therefore, this criterion has been met.

**Front yard and rear yard setback requirements in the base zone setback shall not apply to structures on the interior of the project except that: (1) A minimum front yard setback of 20 feet is required for any garage structure which opens facing a street; (2) A minimum front yard setback of 8 feet is required for any garage opening for an attached single-family dwelling facing a street as long as the required off-street parking spaces are provided.**

**Findings:** As mentioned previously, the applicant proposes an 8-foot front yard setback to primary structures and porches and setbacks to the face of the garage is proposed to remain at 20 to 22.5 feet. However, several of the rear setbacks have been modified with this application. Staff has recommended that the rear yard setbacks for lots with depths of 100 feet or more (e.g. lots 13 through 18) not be reduced. As required by the staff's Conditions of Approval, the applicant is required to maintain a 20-foot rear yard setback for Lots 27 and 28. With the Condition of Approval, this criterion has been met.

**Other provisions of the base zone:**

**All other provisions of the base zone shall apply except as modified by this chapter.**

**Findings:** Required provisions of the base zone have been satisfied by the applicant. All other provisions of the base zone will be met during the building permit phase.

**PD Approval Criteria: 18.350.100**

**Specific planned development approval criteria.** The Commission shall make findings that the following criteria are satisfied when approving or approving with conditions, the concept plan. The Commission shall make findings that the criteria are not satisfied when denying an application.

**All the provisions of the land division provisions, Chapters 18.410, 18.420 and 18.430, shall be met;**

**Findings:** The applicant has requested to subdivide the property concurrently with the planned development approval, therefore this criterion has been met. The applicant's compliance with Chapters 18.410, 18.420 and 18.430 is discussed below.

**Except as noted, the provisions of the following chapters shall be utilized as guideline. A planned development need not meet these requirements where a development plan provides alternative designs and methods, if acceptable to the Commission, that promote the purpose of this section. In each case, the applicant must provide findings to justify the modification of the standards in the chapters listed on Subsection 3 below. The developer may choose to provide or the commission may require additional open space dedication and/or provision of additional amenities, landscaping or tree planting.**

**Chapter 18.715, Density Computation and Limitations.** Unless authorized below, density shall be governed by the density established in the underlying zoning district. The Commission may further authorize a density bonus not to exceed 10% as an incentive to increase or enhance open space, architectural character and/or site variation incorporated into the development. These factors must make a substantial contribution to objectives of the planned development. The degree of distinctiveness and the desirability of variation achieved shall govern the amount of density increase which the Commission may approve according to the following:

- **A maximum of 3% is allowed for the provision of undeveloped common space.**
- **A maximum of 3% is allowed for landscaping; streetscape development; developed open spaces, plazas and pedestrian pathways and related amenities; recreation area development, and/or retention of existing vegetation;**
- **A maximum of 3% is allowed for creation of visual focal points; use of existing physical amenities such as topography, view, and sun/wind orientation;**
- **A maximum of 3% quality of architectural quality and style; harmonious use of materials; innovative building orientation or building grouping; and/or varied use of housing types.**

**Findings:** The applicant has not requested any modifications to the density standards, therefore this



standard has been met. Density will be further discussed under Chapter 18.715 below.

**Chapter 18.730: Exceptions To Development Standards**

**Findings:** The applicant has requested modifications to the lot standards under the planned development process, therefore this criterion is not applicable.

**Chapter 18.795: Visual Clearance Areas**

**Findings:** As required, the applicant has submitted plans which show that visual clearance areas at street intersections will be maintained free from obstructions taller than 3 feet in height. The applicant's plans identify that vision clearance areas and sight distance requirements will be met at the intersection of 74<sup>th</sup> Avenue and Street 'A', as well as at the intersection of the proposed Street 'A' and the new private street. Compliance with vision clearance requirements will be confirmed by a post improvements-construction sight distance certification and through the building permit process for all homes to be constructed within the development. Therefore, this criterion has been met by the applicant.

**Chapter 18.745: Landscaping And Screening**

**Findings:** There is no landscaping buffer requirement between the proposed detached single-family development and the adjacent detached single-family developments. However, the applicant is required to landscape 20% of the site because of the request for a Planned Development. The applicant has provided a street tree plan for 74<sup>th</sup> Avenue and has proposed to leave the open space tract in its natural state to meet this criterion. The open space accounts for 44% of the site, which already contains more than the 20% gross site area of landscaped areas, therefore this criterion is met.

**Chapter 18.765: Off-Street Parking And Loading Requirements**

**Findings:** The minimum requirement for household living is one space for every dwelling unit. The applicant has proposed 2-car garages and another 2 spaces into each of each garage for every lot within the development, therefore this criterion is satisfied.

**Chapter 18.705: Access, Egress And Circulation**

**Findings:** The applicant has provided access to every lot through a minimum 10-foot wide driveway that connects to a public or private street. The proposed street improvements are evaluated later in this report.

**Chapter 18.780: Signs**

**Findings:** No signs are requested with this application. There has been a proliferation of sign violations from marketing new subdivisions. In accordance with a policy adopted by the Director's Designee, all new subdivision developers must enter into a sign compliance agreement to facilitate a more expeditious court process for citations. The applicant has been required to sign this compliance agreement through a condition of approval.

**In addition, the following criteria shall be met:**

**Relationships to the natural and physical environment:**

**The streets, buildings and other site elements shall be designed and located to preserve the existing trees, topography and natural drainage to the greatest degree possible;**

**Findings:** The applicant has proposed to remove the trees within the developable area and retain all trees in the open space tract, except where they are impacted by public facility improvements. Removal of these trees is allowed due to the site's forest timber deferral status. Since the open space tract also contains the natural drainage way, it will be preserved by the proposal. The drainageway will only be slightly impacted by the City required extension of 74<sup>th</sup> Avenue, but this impact will be minimized by utilizing curb tight sidewalks to limit fill encroachment. During the hearing, the applicant further proposed to retain trees within a 15 foot perimeter where proposed lots abut existing homesites on the north and east boundaries of the site (Lots 1-13). Additionally, the applicant proposed enacting a CC&R related to continued preservation of trees left on site following development.

An erosion control and grading plan will be required during the engineering approval process to ensure sensitive areas will not be impacted by sedimentation or erosion, as well as to mitigate off-site impacts. The erosion control plan will ensure that areas where landform alteration takes place will be replanted. The applicant has also submitted a geotech report, which indicates which areas should and should not be developed. As a Condition of Approval, the applicant will be required to undertake further geotechnical investigations in for Lots 13-15, 22 and 23. The applicant is also conditioned to have the geotechnical engineer review the proposed building placement grading plans prior to final plat approval. Therefore, as required, the applicant has met this criterion to the greatest extent possible.

**Structures located on the site shall not be in areas subject to ground slumping and sliding;**

**Findings:** The applicant's geotech report indicates areas of slumping and sliding in the proposed open space tract, where development is not proposed. Lots 13-15 and between lots 22 and 23 have steep slopes and groundwater that was encountered during digging of the test pits. As a Condition of Approval, the applicant will be required to undertake further investigations in these areas.

**There shall be adequate distance between on-site buildings and other on-site and off-site buildings on adjoining properties to provide for adequate light and air circulation and for fire protection;**

**Findings:** The applicant does not propose to reduce the rear setbacks for Lots 1-12. For the interior of site, the street and front yard setbacks will establish ample distance between the homes. The applicant also proposes 3-foot side yards between interior lots, which complies with UBC standards. Therefore, this criterion has been satisfied.

**The structures shall be oriented with consideration for the sun and wind directions, where possible; and**

**Findings:** The applicant has oriented proposed structures in a north-south direction to the extent possible to provide for opportunities to maximize southern glazing exposure.

**Trees preserved to the extent possible. Replacement of trees is subject to the requirements of Chapter 18.790, Tree Removal.**

**Findings:** As mentioned previously, removal of trees outside the sensitive land area is allowed due to the site's forest timber deferral status. **Some trees within the open space tract will require removal to account for utility construction and for the street crossing, but these have been design to minimize impacts on trees.** The applicant has preserved trees in the open space tract to the maximum extent possible.

**Buffering, screening and compatibility between adjoining uses;  
Buffering shall be provided between types of land uses, e.g., between single-family and multi-family residential, and residential and commercial uses;**

**Findings:** The applicant is proposing a detached single-family residential development and adjacent properties are also detached single-family residential developments. Therefore, according to the development code, this criterion is not applicable to this application.

**In addition to the requirements of the buffer matrix (Table 18.745.1), the following factors shall be considered in determining the adequacy and extent of the buffer required under Chapter 18.745:**

- **The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier;**
- **The size of the buffer needs in terms of width and height to achieve the purpose;**
- **The direction(s) from which buffering is needed;**
- **The required density of the buffering; and**
- **Whether the viewer is stationary or mobile.**

**Findings:** There are no buffering requirements between the proposed single-family homes and the existing single-family homes; therefore this criterion is not applicable.

**On-site screening from view from adjoining properties of such activities as service areas, storage areas, parking lots and mechanical devices on roof tops shall be provided and the following factors shall be considered in determining the adequacy of the type and extent of the screening: (a) What needs to be screened; (b) The direction from which it is needed; and c) Whether the screening needs to be year-round.**

**Findings:** There are no service areas, storage areas, parking lots or mechanical devices proposed with this development, therefore this criterion is not applicable.

**Privacy and Noise:**

**Non-residential structures which abut existing residential dwellings shall be located on the site or be designed in a manner, to the maximum degree possible, to protect the private areas on the adjoining properties from view and noise; Private outdoor area - multi-family use: Shared outdoor recreation areas - multi-family use:**

**Findings:** The applicant is proposing single-family dwelling units. These criteria relate to non-residential or multi-family structures.

**Access and Circulation:**

**The number of allowed access points for a development shall be provided in Chapter 18.705;**

**Findings:** Lots 1-27 have direct frontage to a local public or private street in the interior of the site. As a Condition of Approval, Lots 28 and 29 will share a common driveway to 74<sup>th</sup> Avenue, a Neighborhood Route.

**All circulation patterns within a development must be designated to accommodate emergency vehicles; and**

**Findings:** Tualatin Valley Fire and Rescue have reviewed the proposal and indicated that the proposed circulation system is acceptable if certain conditions are addressed. To satisfy these conditions, the applicant must satisfy the following conditions before by the applicant is issued building permits:

1. **FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (15 feet for one or two dwelling units and out buildings), and an unobstructed vertical clearance of not less than 13 feet 6 inches. (UFC Sec. 902.2.2.1) Where fire apparatus roadways are less than 28 feet wide, "NO PARKING" signs shall be installed on one side of the roadway and in turnarounds as needed. Where fire apparatus roadways are 32 feet wide or more, parking is not restricted. (UFC Sec. 902.2.4)
2. **NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. (UFC Sec. 902.2.4) Signs shall conform to the City of Tigard engineering standards.
3. **TURNING RADIUS:** The inside turning radius and outside turning radius shall not be less than 25 feet and 45 feet respectively, measured from the same center point. (UFC Sec. 902.2.2.3)
4. **GRADE:** Private fire apparatus access roadway grades shall not exceed an average grade of 10 percent with a maximum grade of 15 percent for lengths of no more than 200 feet. Intersections and turnarounds shall be level (maximum 5%) with the exception of crowing for water run-off. Public streets shall have a maximum grade of 15%. (UFC Sec. 902.2.2.6)
5. **SINGLE FAMILY DWELLINGS AND DUPLEXES – FIRE HYDRANTS:** Fire hydrants for single family dwellings, duplexes and subdivisions, shall be placed at each intersection. Intermediate fire hydrants are required if any portion of a structure exceeds 500 feet from a hydrant at an intersection as measured in an approved manner around the outside of the structure and along approved fire apparatus access roadways. Placement of additional fire hydrants shall be as approved by the Chief. (UFC Sec. 903.4.2.2)
6. **FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD:** Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway. (UFC Sec. 903.4.2.4)
7. **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and

to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly. (UFC Sec. 901.4.3)

8. **SINGLE FAMILY DWELLINGS – REQUIRED FIRE FLOW:** The minimum available fire flow for single family dwellings and duplexes shall be 1,000 gallons per minute. If the structure(s) is (are) 3,600 square feet or larger, the required fire flow shall be determined according to UFC Appendix Table A-III-A-1. (UFC Appendix III-A, Sec. 5)
9. **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any other construction on the site or subdivision (UFC Sec. 8704)

**Provisions shall be made for pedestrian and bicycle ways if such facilities are shown on an adopted plan.**

**Findings:** SW 74<sup>th</sup> Avenue, which fronts the development, is a Neighborhood Route but has not been designated for bike lanes. This criterion does not apply.

**Landscaping and open space:**

**Residential Development:** In addition to the requirements of subparagraphs (4) and (5) of section a of this subsection, a minimum of 20 percent of the site shall be landscaped;

**Findings:** The open space and drainage tracts of this proposal account for 44% of the site area. That in combination of the landscaping on the site will exceed the minimum 20% landscape criteria. Much of the open space area will remain in its natural state, however, areas of steep slopes that are disturbed must be replanted according to the geotech report. Additionally, areas within the drainageway and wetlands will require mitigation replanting per Clean Water Services and the Division of State Lands requirements. Therefore, this criterion has been met.

**Public Transit:**

**Provisions for public transit may be required where the site abuts a public transit route. The required facilities shall be based on:**

- The location of other transit facilities in the area; and
- The size and type of the proposed development

**The required facilities shall be limited to such facilities as:**

- A waiting shelter;
- A turn-out area for loading and unloading; and
- Hard surface connecting the development to the waiting area

**Findings:** The site does not abut a public transit route, therefore this criterion is not applicable.

**Signs:**

**Findings:** No signs are proposed with this development. There has been a proliferation of sign violations from marketing new subdivisions. In accordance with a policy adopted by the Director's Designee, all new

subdivision developers must enter into a sign compliance agreement to facilitate a more expeditious court process for citations. The applicant has been required to sign this compliance agreement through a condition of approval

**Parking:**

**All parking and loading areas shall be generally laid out in accordance with the requirements set forth in Chapter 18.765;**

**Up to 50% of required off-street parking spaces for single-family attached dwellings may be provided on one or more common parking lots within the planned development as long as each single-family lot contains one off-street parking space.**

**Findings:** The applicant has proposed that the homes will have minimum 2-car garages and another 2 spaces in front of each garage in the driveway for every lot within the development, therefore this criterion is satisfied.

**Drainage:**

**All drainage provisions shall be generally laid out in accordance with the requirements set forth in Chapter 18.775, and the criteria in the adopted 1981 master drainage plan;**

**Findings:** The applicant's engineer has prepared preliminary calculations which indicate that meeting storm water drainage standards is technically feasible, as it has been shown on the submitted preliminary plans. To ensure that standards for storm water drainage will be met, the applicant has been conditioned to comply with applicable City of Tigard and Clean Water Services storm water requirements.

**Floodplain dedication:**

**Where landfill and/or development is allowed within or adjacent to the 100-year floodplain, the City shall require consideration of the dedication of sufficient open land area for a greenway adjoining and within the floodplain. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway with the floodplain in accordance with the adopted pedestrian bicycle pathway plan.**

**Findings:** There are no areas within the 100-year floodplain on the site. Therefore, this standard is not applicable.

**Shared Open Space:**

**Requirements for shared open space:**

**Where the open space is designated on the plan as common open space the following applies:**

- **The open space shall be shown on the final plan and recorded with the Director; and**
- **The open space shall be conveyed in accordance with one of the following methods:**

**By dedication to the City as publicly-owned and maintained as open space. Open space proposed for dedication to the City must be acceptable to it with regard to the size, shape, location, improvement and budgetary and maintenance limitations;**

**By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity, with the City retaining the development rights to the**

property. The terms of such lease or other instrument of conveyance must include provisions suitable to the City Attorney for guaranteeing the following:

- The continued use of such land for the intended purposes;
- Continuity of property maintenance;
- When appropriate, the availability of funds required for such maintenance;
- Adequate insurance protection
- Recovery for loss sustained by casualty and condemnation or otherwise.

By any method which achieves the objectives set forth in Subsection 2 above of this section.

**Findings:** As a condition of approval, the applicant will be required to convey title of the proposed open space as a separate tract to a Homeowner's Association in accordance with the requirements of the Tigard Development Code and Clean Water Services requirements for buffers.

## **CHAPTER 18.370: SPECIAL ADJUSTMENTS**

**Adjustments to development standards within subdivisions (Chapter 18.430). The Director shall consider the application for adjustment at the same time he/she considers the preliminary plat. An adjustment may be approved, approved with conditions, or denied provided the Director finds:**

**Findings:** The applicant is requesting an adjustment to the street improvement standards on SW 74th Avenue and an adjustment to the cul-de-sac standards. On 74<sup>th</sup> Avenue, the applicant is requesting an adjustment to allow the sidewalk to be curb tight in order to reduce the amount of fill required in the drainageway area. The applicant has also requested that the cul-de-sac design standards be adjusted to allow 23 homes access to the cul-de-sac verses the allowed standard of 20 homes, and to allow a cul-de-sac longer than 200 feet. These adjustments are addressed below.

**There are special circumstances or conditions affecting the property, which are unusual and peculiar to the land as compared to other lands similarly situated;**

**Findings:** The applicant is requesting an adjustment to the 5-foot planter strip along 74<sup>th</sup> Avenue to reduce 1,100 additional square feet of impact to the drainageway and wetland area. The applicant proposes this curb tight sidewalk for the special circumstance where the development is required to cross the stream. Outside the resource area, the sidewalk will meet the required public street standards.

Due to the presence of the sensitive lands, the development width of the property makes a looped street unfeasible. Also, because of existing development patterns adjacent to the site, the cul-de-sac could not be extended to the site's east property line. The applicant was able to extend a new public street to the north property line for future connectivity. The length of the cul-de-sac is the primary reason to exceed the 20 home maximum standard on this private street. Because of the special circumstances affecting this property, this criterion has been satisfied.

**The adjustment is necessary for the proper design or function of the subdivision;**

**Findings:** The adjustment request for the curb tight sidewalk is necessary to reduce impacts to the

drainageway and wetlands. The adjustment for the cul-de-sac length is necessary to provide access to Lots 3-19 and to allow a turn around for emergency equipment and garbage trucks. The adjustment to allow more than 20 units to access the cul-de-sac is a result of both the length of the resulting cul-de-sac, and the desire to eliminate the need for a second redundant access serving three lots. Providing this second access would have reduced the amount of area available for buildings, with the result of eliminating the lots being served by it. Therefore, this criterion has been satisfied.

**The granting of the adjustment will not be detrimental to the public health, safety, and welfare or injurious to the rights of other owners of property; and**

**Findings:** The Fire District has reviewed the proposed street design and has provided no objections to these adjustments. There is no evidence that these adjustments will be detrimental to the health safety or welfare to other property owners surrounding the site.

**The adjustment is necessary for the preservation and enjoyment of a substantial property right because of an extraordinary hardship, which would result from strict compliance with the regulations of this title.**

**Findings:** Due to existing development patterns, the natural resources, and the shape of the site, the adjustment is necessary for the applicant to make use of substantial property rights. The applicant is proposing to build within the density prescribed for this site. The criteria for granting these adjustments to the street design, cul-de-sac length, and sidewalk standards have been satisfied.

## **CHAPTER 18.330: ZONE CHANGE:**

**A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial zoning map amendment shall be based on all of the following standards:**

**Demonstration of compliance with all applicable comprehensive plan policies and designations;**

**Findings:** This application has been reviewed under the standards of the Tigard Development Code, which is implemented under the comprehensive plan. This criterion has been satisfied.

**Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.**

**Findings:** The applicant satisfies the criteria for a zone change to place the Planned Development Overlay zoning onto the property.

## **CHAPTER 18.430: SUBDIVISIONS**

**Preliminary Subdivision Plat Approval Criteria: 18.430.040**

**Approval criteria:**

**The approval Authority may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:**



**The proposed preliminary plat complies with the applicable zoning ordinance and other applicable and regulations;**

**Findings:** As illustrated by this report, the proposed plat complies with all applicable ordinances and regulations.

**The proposed plat name is not duplicative or otherwise satisfies the provisions of ORS Chapter 92;**

**Findings:** As required, the applicant will provide an approved plat name reservation prior to final plat approval.

**The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the City determines it is in the public interest to modify the street or road pattern; and**

**Findings:** As mentioned previously, site conditions and existing development limit the applicant to provide street stubs to the east and south, however, a street stub has been provided to the property to the north. The applicant is also proposing to extend 74<sup>th</sup> Avenue to the south. This criterion has been met. An explanation has been provided for all common improvements.

**Findings:** The applicant has provided an explanation for all common improvements. As required, the applicant will provide an approved plat name reservation prior to final plat approval.

## **CHAPTER 18.510: RESIDENTIAL ZONING DISTRICTS**

### **Residential Zoning District: Section 18.510.020**

**The R-4.5 zoning district is designated to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally.**

**Findings:** This Planned Development is permitted in this district as long as the applicant satisfies all applicable criteria.

**Development Standards: Section 18.510.050 States that Development standards in residential zoning districts are contained in Table 18.510.2:**

**Findings:** The proposed development is a Planned Development and is allowed to vary from the standards of the base zone. Therefore, the applicant has satisfied these criteria.

## **CHAPTER 18.705: ACCESS AND EGRESS**

**Minimum access requirements for residential use: Section 18.705.030H**

**Access Management (Section 18.705.030.H)**

**Section 18.705.030.H.1 states that an access report shall be submitted with all new development proposals which verifies design of driveways and streets are safe by meeting adequate stacking needs, sight distance and deceleration standards as set by ODOT, Washington County, the City and AASHTO.**

**Findings:** The applicant's engineer indicates that sight distance will be met. The engineer is required to provide a post-construction sight distance certificate to ensure that this standard is met.

**Section 18.705.030.H.2 states that driveways shall not be permitted to be placed in the influence area of collector or arterial street intersections. Influence area of intersections is that area where queues of traffic commonly form on approach to an intersection. The minimum driveway setback from a collector or arterial street intersection shall be 150 feet, measured from the right-of-way line of the intersecting street to the throat of the proposed driveway. The setback may be greater depending upon the influence area, as determined from City Engineer review of a traffic impact report submitted by the applicant's traffic engineer. In a case where a project has less than 150 feet of street frontage, the applicant must explore any option for shared access with the adjacent parcel. If shared access is not possible or practical, the driveway shall be placed as far from the intersection as possible.**

**Findings:** The proposed new intersection of Street 'A' and 74<sup>th</sup> Avenue, a Neighborhood Route, is not within the influence area of Taylor Ferry Road, a collector street. This criterion has been met.

**Section 18.705.030.H.3 and 4 states that the minimum spacing of driveways and streets along a collector shall be 200 feet. The minimum spacing of driveways and streets along an arterial shall be 600 feet. The minimum spacing of local streets along a local street shall be 125 feet.**

**Findings:** The proposed intersection is over 280 feet away from the intersection of 74<sup>th</sup> Avenue and Barbara Lane. This standard has been met.

**Vehicular access and egress for single-family, duplex or attached single-family dwelling units on individual lots and multi-family residential uses shall not be less than as provided in Table 18.705.1 and Table 18.705.2;**

**Findings:** As a condition of approval, the applicant will be required to provide a minimum 10-foot wide paved accessway for each single-family lot.

**Vehicular access to multi-family structures shall be brought to within 50 feet of the ground floor entrance or the ground floor landing of a stairway, ramp, or elevator leading to the dwelling units.**

**Findings:** Since this is a proposal for a single-family development, this standard does not apply.

**Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.**

**Findings:** Individual homeowners will maintain the access drives once the property is developed. The

Fire District has already reviewed and provided comments on the proposed development, therefore this criterion has been satisfied.

**Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus by one of the following:**

- **A circular, paved surface having a minimum turn radius measured from center point to outside edge of 35 feet;**
- **A hammerhead-configured, paved surface with each leg of the hammerhead having a minimum depth of 40 feet and a minimum width of 20 feet;**
- **The maximum cross slope of a required turnaround is 5%.**

**Findings:** Since there are no access drives that exceed 150 feet in length, this criterion does not apply.

**Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet), may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in the excess of 200 feet in length.**

**Findings:** There are no access drives that exceed 200 feet in length, therefore this criterion does not apply.

**Where permitted, minimum width for driveway approaches to arterials or collector streets shall no less than 20 feet so as to avoid traffic turning from the street having to wait for traffic exiting the site.**

**Findings:** This site is not adjacent to a collector or arterial, therefore this standard does not apply.

**To provide for increased traffic movement on congested streets and to eliminate turning movements problems, the Director may restrict the location of driveways on streets and require the location of driveways be placed on adjacent streets, upon the finding that the proposed access would cause or increase existing hazardous conditions to exist which would constitute a clear and present danger to the public health, safety, and general welfare.**

**Findings:** The proposed development can comply with all applicable requirements of Chapter 18.705. As a condition of approval, the applicant will provide joint access with an easement or tract to Lots 28 and 29. In addition, the applicant will be conditioned to demonstrate that all lots can be accessed by a minimum 10-foot wide paved accessway.

## **CHAPTER 18.715: DENSITY COMPUTATIONS**

**Density Calculation: 18.715.020**

**Definition of net development area.**

**Net development area, in acres, shall be determined by subtracting the following land area(s) from the gross acres, which is all of the land included in the legal description of the property to be developed:**

- All sensitive land areas: a. Land within the 100-year floodplain; b. Land or slopes exceeding 25%; c. Drainage ways; and d. Wetlands.
- All land dedicated to the public for park purposes;
- All land dedicated for public rights-of-way. When actual information is not available, the following formulas may be used: Single-family development: allocate 20% of gross acreage; Multi-family development: allocate 15% of gross acreage.
- All land proposed for private streets; and
- A lot of at least the size required by the applicable base zoning district, if an existing dwelling is to remain on the site.

**Calculating maximum number of residential units.**

To calculate the maximum number of residential units per net acre, divide the number of square feet in the net acres by the minimum number of square feet required for each lot in the applicable zoning district.

**Findings:** The density calculations for the site are as follows:

Gross lot area:	407,721 square feet
Public Street dedication	17, 828 square feet
Private Street dedication	22,670 square feet
Drainageway	70,862 square feet
Steep Slopes	107,556 square feet
<u>Wetlands (contained in drainageway)</u>	
Net Developable Area:	188,805 square feet

Number of Lots Allowed  
in Net Developable Area: 25 Lots

#### **Residential Density Transfer**

Rules governing residential density transfer. The units per acre calculated by subtracting land areas listed in Section 18.715.020 A. 1a - c from the gross acres may be transferred to the remaining buildable land areas subject to the following limitations:

1. The number of units which can be transferred is limited to the number of units which would have been allowed on 25 percent of the unbuildable area if not for these regulations; and
2. The total number of units per site does not exceed 125 percent of the maximum number of units per gross acre permitted for the applicable comprehensive plan designation.

**Findings:** According to the rules of density transfer, the applicant is able to utilize 25% of the drainageway and steep slopes as part of the net developable area. To calculate the maximum allowed density, the net developable area is divided by the minimum allowed square footage of the site's zone.

Drainageway and steep slopes = 178,418. 25% of this constrained area = 44,604  
Net Developable area = 178,418+44,604 = 233,409 square feet

R-4.5 Zone:

233,409 (net developable area)/7,500 (minimum allowed s.f. for this zone) = 31 dwelling units

The total number of units allowed is:  
 $125\% \text{ (gross acreage)} \times 25 \text{ Lots} = 31 \text{ Lots}$

Therefore, the proposed 29 dwelling units do not exceed the maximum density of the net developable area. This criterion has been met.

**Calculating minimum number of residential units.**

As required by Section 18.510.040, the minimum number of residential units per net acre shall be calculated by multiplying the maximum number of units determined in the Subsection B above by 80% (0.8).

**Findings:** The required minimum density is calculated as follows:

$25 \text{ Lots} \times 0.80 = 20 \text{ Lots}$

The applicant has met this standard.

## **CHAPTER 18.725: ENVIRONMENTAL PERFORMANCE STANDARDS**

**Noise.** For the purposes of noise regulation, the provisions of Sections 7.41.130 through 7.40.210. Of the Tigard Municipal Code shall apply.

**Visible Emissions.** Within the commercial zoning districts and the industrial park (IP) zoning district, there shall be no use, operation or activity which results in a stack or other pointsource emission, other than an emission from space heating, or the emission of pure uncombined water (steam) which is visible from a property line. Department of Environmental Quality (DEQ) rules for visible emissions (340-21-015 and 340-28-070) apply.

**Vibration.** No vibration other than that caused by highway vehicles, trains and aircraft is permitted in any given zoning district which is discernible without instruments at the property line of the use concerned.

**Odors.** The emissions of odorous gases or other matter in such quantities as to be readily detectable at any point beyond the property line of the use creating the odors is prohibited. DEQ rules for odors (340-028-090) apply.

**Glare and heat.** No direct or sky reflected glare, whether from floodlights or from high temperature processes such as combustion or welding, which is visible at the lot line shall be permitted, and 1) there shall be no emission or transmission of heat or heated air which is disconcerting at the lot line of the source; and 2) these regulations shall not apply to signs or floodlights in parking areas or construction equipment at the time of construction or excavation work otherwise permitted by this title.

**Insects and rodents. All materials including wastes shall be stored and all grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.**

**Findings:** Adherence to these standards will be assured through the on-going review of the City of Tigard Code Enforcement Officer after individual lots are purchased by homeowners. **A condition will be imposed to require ongoing compliance with this standard from the applicant and future owners of lots. With this condition, these standards have been met.**

## **CHAPTER 18.745: LANDSCAPING AND SCREENING**

**Establishes standards for landscaping, buffering and screening to enhance the aesthetic environmental quality of the City.**

**Findings:** There are no landscaping standards that apply to the R-4.5 zone. However, the open space and drainage tracts constitute approximately 44% of the site area. Additional landscaping will be planted within lots by individual homeowners.

**Section 18.745.040. states that all development projects fronting on public street, private street, or a private driveway more than 100 feet in length after the adoption of this title shall be required to plant street trees in accordance with the standards in Section 18.745.040C.**

**Findings:** As a condition of approval, the applicant will be required to submit a revised street tree plan that identifies an alternative tree species for either the public or private street to vary the streetscape. Individual lot owners will not be issued a certification of occupancy until the landscaping requirements of 18.745.040 have been met. The applicant agrees that varying the street trees is feasible and that this condition can be met.

### **Buffering and Screening - Section 18.745.050**

**Buffering and Screening is required to reduce the impacts on adjacent uses which are of a different type in accordance with the matrices in this chapter (Tables 18.745.1 and 18.745.2).**

**Findings:** The applicant has been conditioned to comply with Landscaping and Screening requirements of Chapter 18.745. However, single-family developments are adjacent to the subject site so there are no buffering and screening requirements for this project. During the application appeal process, the applicant proposed the installation of a Leyland cypress hedge along the rear of lots 1-12 for additional privacy screening for existing abutting homes. This is memorialized as a condition of approval.

## **CHAPTER 18.755: MIXED SOLID WASTE AND RECYCLABLE STORAGE**

**Findings:** Waste Management, the correct service provider has reviewed the applicant's proposal and has found it to be acceptable for the removal of solid waste and recyclables.

## **CHAPTER 18.765: OFF-STREET PARKING AND LOADING REQUIREMENTS**

**This chapter is applicable for development projects when there is new construction expansion of existing use, or change of use in accordance with Section 18.765.070 Minimum and Maximum Off-Street Parking Requirements.**

**Findings:** As mentioned previously, the applicant has proposed 2-car garages and another 2 spaces in front of each garage for every lot within the development, therefore this criterion is satisfied. To ensure that the development complies with this standard, the developer has been conditioned to submit materials demonstrating that at least one off-street parking space, which meets minimum dimensional requirements and setback requirements as specified in Title 18, will be provided on-site for each new home.

## **CHAPTER 18.775: SENSITIVE LANDS**

**Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designed as significant wetlands on the City of Tigard. Wetland and Streams Corridors Map., do not require a sensitive lands permit. The City shall require that all necessary permits from other agencies are obtained. All other applicable City requirements must be satisfied, including sensitive land permits for areas within the 100-year floodplain, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.**

**Findings:** The wetlands on this site are not designated as significant by the City. However, as a condition of approval, the applicant will be required to obtain all the necessary permits from the Army Corp, Division of State Lands, and Clean Water Services.

**Steep slopes. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:**

- 1. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;**
- 2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;**
- 3. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and**
- 4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.**

**Findings:** As mentioned previously, the applicant has attempted to reduce the area that the development

impacts the steep slopes and natural areas of the site. An erosion control and grading plan will be required during the engineering approval process to ensure sensitive areas will not be impacted by sedimentation or erosion, as well as to prevent off-site impacts. The erosion control plan will ensure that areas where landform alteration takes place will be replanted. The applicant has also submitted a geotech report, which indicates which areas should and should not be developed. As a Condition of Approval, the applicant will be required to undertake further geotechnical investigations in for Lots 13-15, 22 and 23. The applicant is also conditioned to have the geotechnical engineer review the proposed building placement grading plans prior to final plat approval.

**Within drainageways. The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive land permit within drainageways based upon findings that all of the following criteria have been satisfied:**

- 1. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;**

**Findings:** The applicant has proposed to extend 74<sup>th</sup> Avenue to meet the objectives of the City's Transportation Plan and to serve two lots in the southern portion of the site. The applicant has proposed a curb tight sidewalk to minimize the amount of fill in the stream corridor. The extent of the disturbance is not greater than the proposed use, therefore this criterion has been met.

- 2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;**

**Findings:** An erosion control and grading plan will be required during the engineering approval process to ensure sensitive areas will not be impacted by sedimentation or erosion, as well as to prevent off-site impacts. The applicant is also conditioned to have the geotechnical engineer review the proposed building placement prior to City approval of construction plans.

- 3. The water flow capacity of the drainageway is not decreased;**

**Findings:** The applicant has submitted a stormwater report that includes using an oversized box culvert to ensure that upstream properties are not affected by the development.

- 4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;**

**Findings:** The applicant has been conditioned to submit an erosion control and grading plan which will require areas to be replanted prior issuance of final building permits. In addition, the applicant is required to replant per the requirements of the Clean Water Services letter.

- 5. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;**

**Findings:** The 1981 Master Drainage Plan does not identify any public facilities for this portion of Ash



Creek.

6. **The necessary U.S. Army Corps of Engineer and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;**

**Findings:** The applicant has submitted approvals from Clean Water Services. As a condition of approval, the applicant will be required to show approvals from the Corps of Engineers and the Division of State Lands.

7. **Where land form alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the consideration of dedication of sufficient open land area within and adjacent to the floodplain in accordance with the Comprehensive Plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian bicycle pathway plan.**

**Findings:** There is no 100-year floodplain within the proposed development site, therefore this standard is inapplicable. In order to receive a sensitive lands permit, the applicant has been conditioned to meet the following:

- Prior to the issuance of final occupancy on any building, the applicant must provide City staff with a letter from Clean Water Services that indicates compliance with the approved service provider letter.
- Prior to any site work, the applicant shall provide evidence of all necessary approvals from Army Corps of Engineers and the Division of State Lands.
- Prior to any site work, the drainage tract must be clearly identified in the field with permanent fencing so as to insure no grading or material is placed in the area. Any fencing that is damaged during construction must be replaced prior to final building inspection.
- Prior to final plat approval submit and receive approval for an erosion control and grading plan for alteration on slopes exceeding 25%.
- Re-plant any area where vegetation has been removed as a result of grading in conformance with the Clean Water Services Standards as set forth in the site assessment file, prior to obtaining permits.
- Prior to commencing on-site improvements, the applicant shall have the geotech engineer review and approve the construction plans for the City's review and approval.

## **CHAPTER 18.790: TREE REMOVAL**

**A tree plan for the planting, removal and protection of trees prepared by a certified arborist shall be provided with a site development review application. The tree plan shall include identification of all existing trees, identification of a program to save existing trees or mitigate tree removal over 12 inches in caliper, which trees are to be removed, protection program defining standards and methods that will be used by the applicant to protect trees during and after construction.**

**Findings:** CDC 18.790.050 provides exemptions from the requirement to obtain tree removal permits. One of those exemptions is stated in CDC 18.790.050(D)(4). The City Council has interpreted this exemption as being applicable to the requirement to develop a tree plan and to provide mitigation for trees

removed at the time of development imposed by CDC 18.790.030. This interpretation is based on the Council's understanding of the intent of the exemption. The exemption was intended to recognize that when trees have been planted or maintained with the goal that they ultimately be used for timber or pulp, it is reasonable to allow the property owner to harvest them without requiring mitigation. Allowing the harvest of trees intended for timber or pulp without requiring a tree plan or mitigation is a good policy because it respects the reasonable expectations of property owners. Furthermore, if the exemption did not apply at the time of development, property owners with tax-deferred timber property would cut all the timber on the property so that they could develop in the future without being required to mitigate. This is not desirable because it would lead to widespread harvesting of trees that have environmental benefits and that contribute to the character of City of Tigard.

The interpretation is also based on the language of CDC 18.790.050. That section requires tree removal permits only for trees on sensitive lands. CDC 18.790.050(A) The exemption only applies to trees that are not on sensitive lands. CDC 18.790.050(D)(4). If the exemption in CDC 18.790.050(D)(4) applied only to the requirement of CDC 18.790.050 and not to the tree plan and mitigation requirement of CDC 18.790.030, it would have been totally unnecessary because it would not exempt anything – it doesn't apply to sensitive lands and the permit requirement only applies to sensitive lands. Separate provisions in laws or ordinances should be interpreted as having separate effects. The only way to give separate effect to CDC 18.790.050(D)(4) is to apply it to the tree plan and mitigation requirement of CDC 18.790.030.

As applied to this application, some of the property is considered to be a sensitive land, so a tree plan is required for that area. The applicant has provided a tree plan for the entire area, and so has complied with the requirement. The applicant does not propose removal of more than 25 percent of trees over 12 caliper inches from the sensitive land area, so no mitigation is required under 18.790.030.

As mentioned previously, this site is in tax-deferred timber property status, therefore the applicant may harvest all the trees outside of the sensitive land areas without having to comply with the mitigation requirements of this Chapter. The applicant's tree removal plan indicates that approximately 74 trees within the sensitive land areas will be removed. During the application appeal process, the applicant proposed retaining additional trees within the developable portion of the site. A 15' wide area in the rear of the perimeter of the northern and eastern lots is proposed to retain all healthy and viable trees, subject to a certified arborists review and determination. To ensure that the trees are preserved according to the tree removal plan, the following conditions will apply:

- The applicant shall submit an arborist report with tree protection recommendations, and shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
- Prior to site work, the applicant shall submit a complete set of construction documents with the tree locations for the City Arborist review. The construction documents shall show the open space tract trees protected (with the exception of trees that require removal for utility construction) and a 15' wide area of trees protected along the rear of the perimeter lots (with the exception of any trees that are dead, dying, diseased, or deemed dangerous).
- The applicant shall notify the City Arborist when tree protection measures are in place so that he may verify that the measures will function properly prior to construction.
- The applicant shall submit CC&R's that additionally establish restrictions regarding the removal of trees greater than 12 inches in diameter from any of the lots or tracts following completion of the subdivision improvements. Trees may only be allowed to be removed subject to a certified arborist's finding that the trees are dead, or in severe decline.

## CHAPTER 18.795: VISUAL CLEARANCE AREAS

Clear vision area shall be maintained on the corners of all property adjacent to intersection of two streets, a street and a railroad, or a driveway providing access to a public or private street. A clear vision area shall contain no vehicle hedge, planting, fence, wall structure, or temporary or permanent obstruction exceeding three (3) feet in height, measured from the top of the curb, or where no curb exists, from the street center grade, except the trees exceeding this height may be located in this area, provided all branches below eight feet are removed. For arterial streets the visual clearance shall not be less than 35 feet on each side of the intersection.

**Findings:** The applicant has illustrated clear vision areas at the street intersections and has indicated that no obstructions will be placed in those areas. Compliance with vision clearance requirements will be confirmed through the building permit process for all homes to be constructed within the development. This standard has been met.

## CHAPTER 18.390: DECISION MAKING PROCEDURES

### G. Impact Study: Section 18.390.040.B.e

Requires that the applicant shall include an impact study. The study shall address, as a minimum, the transportation system, including bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact of the development on the public at large, public facilities systems, and affected private property users. In situations where the Community Development Code requires the dedication of real property interests, the applicant shall either specifically concur with the dedication of real property interest, or provide evidence which supports the conclusion that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

**Findings:** The applicant submitted an impact study, satisfying the required elements above.

### Rough Proportionality Analysis

**Findings:** The Analysis has been calculated as follows:

Full Impact of the Development=	
73,370 (TIF of \$2,530 x 29 DU) / 0.32 (TIF's Coverage Citywide) =	\$229,281
Less TIF Assessment= (TIF of \$2,530 x 29 DU)=	-\$73,370
Less Mitigated costs of 74 <sup>th</sup> Avenue Improvement	<u>-\$250,000</u>
Estimate of Unmitigated Impacts	-\$94,089

Although the costs of the improvements is greater than the level of impact, the improvements have been proposed by the applicant. The required dedication of right-of-way is clearly proportionate to the impact of the creation of the 29 lots. Therefore, the applicant has satisfied this criterion.

## **CHAPTER 18.810: STREET AND UTILITY IMPROVEMENTS STANDARDS**

**Chapter 18.810 provides construction standards for the implementation of public and private facilities and utilities such as streets, sewers, and drainage. The applicable standards are addressed below:**

### **Streets:**

#### **Improvements:**

**Section 18.810.030.A.1 states that streets within a development and streets adjacent shall be improved in accordance with the TDC standards.**

**Section 18.810.030.A.2 states that any new street or additional street width planned as a portion of an existing street shall be dedicated and improved in accordance with the TDC.**

**Minimum Rights-of-Way and Street Widths: Section 18.810.030(E) requires a neighborhood route street to have a 54-foot right-of-way width and a 32-foot paved section. Other improvements required may include on-street parking, sidewalks and bikeways, underground utilities, street lighting, storm drainage, and street trees.**

**Findings:** Due to the unimproved nature of 74<sup>th</sup> Avenue, the applicant met with representatives from the City of Tigard Engineering Department and the City of Tualatin Water District (who has a water transmission line within the 74<sup>th</sup> Avenue right of way) to discuss several issues regarding the extension of this street. All parties agreed that the applicant should be permitted to construct 74<sup>th</sup> Avenue with a steeper grade in order to minimize the amount of fill over the water line and in the wetland area. Therefore, the applicant requested an adjustment to the grade standard. However, since the proposed street grade does not exceed 15% for over 250 feet, an adjustment is not required.

The applicant also requested the speed limit be reduced to 15 miles per hour in the section where the 74<sup>th</sup> avenue crossing will occur. This speed limit was accepted by the City of Tigard Engineer. The City of Tigard standards are met by a 15 mile per hour vertical curve design, to a "K value" of greater than 5 (AASHTO).

The applicant also requested an adjustment to the sidewalk standards at the stream crossing location on 74<sup>th</sup> Avenue. By moving the sidewalk to the curb line, five fewer feet of width into the stream corridor is avoided. Staff has recommended approval the sidewalk adjustment.

**Future Street Plan and Extension of Streets: Section 18.810.030(F) states that a future street plan shall be filed which shows the pattern of existing and proposed future streets from the boundaries of the proposed land division. This section also states that where it is necessary to give access or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary lines of the tract to be developed and a barricade shall be constructed at the end of the street. These street stubs to adjoining properties are not considered to be cul-de-sacs since they are intended to continue as through streets at such time as the adjoining property is developed. A barricade shall be constructed at the end of the street by the property owners which shall not be removed until authorized by the City Engineer, the cost of which shall be included in the street construction cost. Temporary hammerhead turnouts or temporary cul-de-sac bulbs shall be constructed for stub streets in**

excess of 150 feet in length.

**Findings:** The applicant has proposed to stub the new public street to the parcel to the north. As mentioned previously, site conditions and existing development limit the applicant to provide street stubs to the east and south. The applicant is also proposing to extend 74<sup>th</sup> Avenue to the south. This criterion has been met.

**Street Alignment and Connections:** Section 18.810.030. (G) states that staggering of streets making the 1<sup>st</sup> intersections at collectors and arterials shall not be designed so that jogs of less than 300 feet on such streets are created, as measured from the centerline of such street. Spacing between local street intersections shall have a minimum separations of 125 feet. All local streets which abut a development site shall be extended within the site to provide through circulation when not precluded by environmental or topographical constraints, existing development patterns or strict adherence to other standards in this code. A street connection or extension is precluded when it is not possible to redesign, or reconfigure the constraints, the mere presence of a constraint is not sufficient to show that a street connection is not possible. The applicant must show why the constraint precludes some reasonable street connection.

**Findings:** As mentioned previously, the drainageway precludes extension of an interior public or private street to the south. No street connections are possible to the east due to the existing development patterns adjacent to the site. This criterion has been satisfied.

**Cul-de-sacs:** 18.810.030.K states that a cul-de-sac shall be no more than 200 feet long, shall not provide access to greater than 20 dwelling units, and shall only be used when environmental or topographical constraints, existing development pattern, or strict adherence to other standards in this code preclude street extension and through circulation:

- All cul-de-sacs shall terminate with a turnaround. Use of turnaround configurations other than circular, shall be approved by the City Engineer; and
- The length of the cul-de-sac shall be measured along the centerline of the roadway from the near side of the intersecting street to the farthest point of the cul-de-sac.
- If a cul-de-sac is more than 300 feet long, a lighted direct pathway to an adjacent street may be required to be provided and dedicated to the City.

**Findings:** The applicant has requested an adjustment to allow a private street cul-de-sac of approximately 500 feet in length. The site is over 967 feet deep and the stream to the south makes it too narrow to accommodate a looped street. In addition, steep slopes, the creek and existing development preclude any connections to the south or east. The applicant has demonstrated that there are no practicable alternatives to provide reasonable and efficient access to the entire property. This adjustment is justified by the shape of the property, natural features, and pre-existing development..

**Grades and Curves:** Section 18.810.030.M states that grades shall not exceed ten percent on arterials, 12% on collectors streets, or 12% on any other street (except that local or residential access streets may have segments with grades up to 15% for distances of no greater than 250 feet) and :

**Findings:** Staff review revealed that the proposed street grade does not exceed 15% for over 250 feet.

Therefore, the applicant's request for an adjustment is not required.

**Private Streets:** Section 18.810.030.S states that design standards for private streets shall be established by the City Engineer. The City shall require legal assurances for the continued maintenance of private streets, such as recorded maintenance agreement. Private streets serving more than six dwelling units are permitted only within planned developments, mobile home parks and multi-family residential developments.

**Findings:** The applicant is proposing to serve a total of 23 lots (lots 1-23) with the proposed private street. Since this development is proposed as a planned development, a private street is acceptable.

**Block Designs –** Section 18.810.030.S states that the length, width, and shape of blocks shall be designed with due regard to providing adequate building sites for the use contemplated, consideration of needs for convenient access, circulation, control and safety of street traffic and recognition of limitations and opportunities of topography.

**Block Sizes:** Section 18.810.040.B.1 states that the perimeter of blocks formed by streets shall not exceed 1,800 feet measured along the right-of-way line except:

- Where street location is precluded by natural topography, wetlands or other bodies of water or pre-existing development or;
- For blocks adjacent to arterial streets, limited access highways, major collectors or railroads.
- For non-residential blocks in which internal public circulation provides equivalent access.

**Findings:** As mentioned previously, the existing development, steep slopes, and stream corridor do not allow connections other than the proposed connection to the north. The proposed street stub to the north will eventually provide a block measuring approximately 1,250 feet. This criterion has been met.

Section 18.810.040.B.2 also states that bicycle and pedestrian connections on public easements or right-of-ways shall be provided when full street connection is not possible. Spacing between connections shall be no more than 330 feet, except where precluded by environmental or topographical constraints, existing development patterns, or strict adherence to other standards in the code.

**Findings:** The applicant proposes to serve the site with a sidewalk on one side of the private street and a public street stub with sidewalks on both sides to the north property boundary. There are no opportunities for bicycle and/or pedestrian connections to the east or south because of topography and natural features. Therefore, this standard has been satisfied.

**Lots – Size and Shape:** Section 18.810.060(A) prohibits lot depth from being more than 2.5 times the average lot width, unless the parcel is less than 1.5 times the minimum lot size of the applicable zoning district.

**Findings:** Only one of the proposed lots (#13) exceed 1.5 times the minimum lot size. This lot is 69 feet in average lot width and 170 feet in lot depth. Two and a half times the proposed lot width is 172.5 feet. Since 170 feet is less than 2.5 times the lot width, this criterion has been satisfied.

**Lot Frontage:** Section 18.810.060(B) requires that lots have at least 25 feet frontage on public or private streets, other than an alley. In the case of a land partition, 18.420.050.A.4c applies, which requires a parcel to either have a minimum 15-foot frontage or a minimum 15-foot wide recorded access easement. In cases where the lot is for an attached single-family dwelling unit, the frontage shall be at least 15 feet.

**Findings:** Lots 9, 11, 12, 1 and 29 do not have 25 feet of frontage on a public or private street. Therefore the applicant will be conditioned to revise the plat to accommodate a minimum of 25 feet of frontage for all lots within the development. Since there is greater than 25 feet of average lot frontage available for the lots along the proposed streets, it is feasible to modify the final plat to meet this condition.

**Sidewalks:** Section 18.810.070.A requires that sidewalks be constructed to meet City design standards and be located on both sides of arterial, collector and local residential streets.

**Findings:** The applicant is proposing to construct sidewalks with other street improvements. This criterion has been satisfied.

**Sanitary Sewers:**

**Sewers Required:** Section 18.810.090.A requires that sanitary sewer be installed to serve each new development and to connect developments to exiting mains in accordance with the provisions set forth in Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 1996 and including any future revisions or amendments) and the adopted policies of the comprehensive plan.

**Over-sizing:** Section 18.810.090.C states that proposed sewer systems shall include consideration of additional development within the area as projected by the Comprehensive Plan.

**Findings:** There is an existing sewer manhole in 74<sup>th</sup> Avenue. The applicant is proposing to extend the 8 inch line north in 74<sup>th</sup> Avenue and then east in the new public and private streets to serve all lots. As mentioned previously, the applicant is proposing to stub a line to the north for extension with future street improvements.

**Storm Drainage:**

**General Provisions:** Section 18.810.100.A states requires developers to make adequate provisions for storm water and flood water runoff.

**Accommodation of Upstream Drainage:** Section 18.810.100C states that a culvert or other drainage facility shall be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the development. The City Engineer shall approve the necessary size of the facility, based on the provisions of Design and Construction Standards for Sanitary and Surface Water Management (as adopted by the Clean Water Services in 2000 and including any future revisions or amendments).

**Findings:** The applicant's engineer has done preliminary calculations to size the new box culvert under 74<sup>th</sup> Avenue so that it accommodates upstream drainage. The 5-foot by 10-foot box culvert has been slightly oversized for easier fish passage. The applicant has also proposed to protect the condition of the existing creek by moving the development away from the sensitive area boundary. Therefore, in

accordance with City and Clean Water Services standards, the capacity of the existing drainageway will not be impacted by the proposed development.

**Effect on Downstream Drainage:** Section 18.810.100.D states that where it is anticipated by the City Engineer that the additional runoff resulting from the development will overload an existing drainage facility, the Director and Engineer shall withhold approval of the development until provisions have been made for improvement of the potential condition of the facility or until provisions have been made for storage of additional runoff caused by the development in accordance with the Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Service in 2000 and including any future revisions or amendments).

**Findings:** The site generally slopes towards Ash Creek. The applicant has proposed a storm system in the new public and private streets, including the in the street stub to the north property. The storm system is proposed to outlet into a pond that will provide water quality and quantity measures before it is discharged into Ash Creek, as required by Clean Water Services. As required, the applicant will provide access to the pond for maintenance. In addition the applicant has proposed to construct an oversized culvert under 74<sup>th</sup> Avenue to accommodate the Ash Creek Crossing. With these improvements there is sufficient detention capacity to meet the Clean Water Services standards.

**Bikeways and Pedestrian Pathways:**

**Bikeway Extension:** Section 18.810.110.A states that developments adjoining proposed bikeways identified on the City's adopted pedestrian/bikeway plan shall include provisions for the future extension of such bikeways through the dedication of easements or right-of-way.

**Findings:** 74<sup>th</sup> Avenue is not classified as a bike facility, therefore this criterion is inapplicable.

**Cost of Construction:** Section 18.810.110B states that development permits issues for planned unit developments, conditional use permits, subdivisions, and other developments which will principally benefit from such bikeways shall be conditioned to include the cost of construction of bikeway improvements

**Findings:** This standard is not applicable to this proposal.

**Minimum Width:** Section 18.810.110.C states that the minimum width for bikeways within the roadway is five feet per bicycle travel lane. Minimum width for two-way bikeways separated from the road is eight feet.

**Findings:** This standard is not applicable to this proposal.

**Utilities:**

Section 18.810.120 states that all utility lines, but not limited to those required for electric communication, lighting and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric lines operating at 50,000 volts or above, and :



- The developer shall make all necessary arrangements with the serving utility to provide the underground services;
- The City reserves the right to approve location of all surface mounted facilities;
- All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets; and
- Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.

**Exception to Under-Grounding Requirement:** Section 18.810.120C states that a developer shall pay a fee in-lieu of under-grounding costs when the development is proposed to take place on a street where existing utilities which are not underground will serve the development and the approval authority determines that the cost and technical difficulty of under-grounding the utilities outweighs the benefit of under-grounding in conjunction with the development. The determination shall be on a case-by-case basis. The most common, but not the only, such situation is a short frontage development for which under-grounding would result in the placement of additional poles, rather than the removal of above-ground utilities facilities. An applicant for a development which is served by utilities which are not underground and which are located across a public right-of-way from the applicant's property shall pay a fee in-lieu of under-grounding.

**Findings:** All newly constructed utilities are to be placed underground. There are existing overhead lines along the frontage of SW 74<sup>th</sup> Avenue. The applicant shall either place these utilities underground or pay the fee in lieu. If the fee in-lieu is proposed by the applicant, it is equal to \$27.50 per lineal foot of street frontage that contains the overhead lines. The frontage along the site is 421 lineal feet; therefore the fee would be \$11,578.

## **CONDITIONS OF APPROVAL:**

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO COMMENCING ANY ON-SITE IMPROVEMENTS,  
INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES:**

**Submit to the Planning Department (Morgan Tracy, 639-4171, Ext. 2428) for review and approval:**

1. Prior to site work, the applicant shall submit an arborist report with tree protection recommendations, and shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
2. Prior to site work, the applicant shall submit a complete set of construction documents with the tree locations for the City Arborists review. The applicant will not cut any healthy trees within the designated open space tract. Furthermore, the applicant shall not cut any healthy trees in the tree preservation areas of Lots 1-18, which shall be defined as the area at least 15 from the rear of the building footprints. However, if an arborist determines that trees in these areas are dead, diseased, or pose a safety hazard, then the applicant shall remove affected trees from those areas.
3. Prior to site work, the applicant shall notify the City Arborist at least 48 hours prior to commencing construction when the tree protection measures are in place so that he may verify

that the measures will function properly.

4. Prior to site work, the applicant shall provide evidence of all necessary approvals for work within the wetlands from US Army Corps of Engineers and the Division of State Lands.
5. Prior to site work, the drainage tract must be clearly identified in the field with permanent (preferably with minimum 4-foot-tall black chainlink) fencing so as to insure no grading or material is placed in this area. Any fencing that is damaged during construction must be replaced prior to final building inspection. If the damage is such that it will no longer effectively identify the tract, it shall be replaced/reinstalled immediately.
6. Prior to site work, a signed approval shall be included with the City's construction drawing packet.

**Submit to the Engineering Department (Kim McMillan, 639-4171, ext. 2642) for review and approval:**

7. Prior to approval of construction plans, the applicant shall "pothole" the City of Tualatin's main water transmission line to determine the exact location and condition of the pipe. The applicant shall notify the City of Tigard and the City of Tualatin 48 hours prior to the pothole inspections and when any construction activity will impact the pipe (such as placement of fill and excavation in the immediate vicinity) so that a representative from both the Cities of Tualatin and Tigard can be present.
8. Prior to commencing onsite improvements, a Public Facility Improvement (PFI) permit is required for this project to cover all infrastructure and any other work in the public right-of-way. Eight (8) sets of detailed public improvement plans shall be submitted for review to the Engineering Department. NOTE: these plans are in addition to any other drawings required by the Building Division and should only include sheets relevant to public improvements. Public Facility Improvement (PFI) permit plans shall conform to City of Tigard Public Improvement Design Standards, which are available at City Hall and the City's web page ([www.ci.tigard.or.us](http://www.ci.tigard.or.us)).
9. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public improvements. For example, specify if the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Engineering Department will delay processing of project documents.
10. The applicant shall provide a construction vehicle access and parking plan for approval by the City Engineer. The purpose of this plan is for parking and traffic control during the public improvement construction phase. All construction vehicle parking shall be provided on-site. No construction vehicles or equipment will be permitted to park on the adjoining residential public streets. Construction vehicles include the vehicles of any contractor or subcontractor involved in the construction of site improvements or buildings proposed by this application, and shall include the vehicles of all suppliers and employees associates with the project.
11. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 74<sup>th</sup> Avenue. The improvements adjacent to this site shall

include:

- A. City standard pavement section for a neighborhood route, without bike lanes, from curb to centerline equal to 16 feet, with a minimum pavement width of 24 feet;
  - B. Pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
  - C. Concrete curb, or curb and gutter as needed;
  - D. Storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;
  - E. 5-foot concrete sidewalk with a planter strip (unless adjusted);
  - F. Street trees in the planter strip spaced per TDC requirements;
  - G. Street striping;
  - H. Streetlight layout by applicant's engineer, to be approved by City Engineer;
  - I. Underground utilities;
  - J. Street signs (if applicable);
  - K. Driveway apron (if applicable);
  - L. Adjustments in vertical and/or horizontal alignment to construct SW 74<sup>th</sup> Avenue in a safe manner, as approved by the Engineering Department, including reductions to the speed limit as necessary; and
  - M. Right-of-way dedication to provide 27 feet from centerline.
12. The applicant's Public Facility Improvement permit construction drawings shall indicate that full width street improvements, including traffic control devices, mailbox clusters, concrete sidewalks, driveway aprons, curbs, asphaltic concrete pavement, sanitary sewers, storm drainage, street trees, streetlights, and underground utilities shall be installed within the interior subdivision streets. Improvements shall be designed and constructed to local street standards.
13. A profile of 74<sup>th</sup> Avenue shall be required, extending 300 feet either side of the subject site showing the existing grade and proposed future grade.
14. The applicant's construction drawings shall show that the pavement and rock section for the proposed private street(s) shall meet the City's public street standard for a local residential street.
15. The applicant shall obtain approval from the Tualatin Valley Water District for the proposed water connection prior to issuance of the City's Public Facility improvement permit.
16. Final design plans and calculations for the proposed public water quality/detention facility shall be submitted to the Engineering Department (Kim McMillan) as a part of the Public Facility Improvement plans. Included with the plans shall be a proposed landscape plan to be approved by the City Engineer. The proposed facility shall be dedicated in a tract to the City of Tigard on the final plat. As a part of the improvement plans submittal, the applicant shall submit an Operations and Maintenance Manual for the proposed facility for approval by the Maintenance Services Director. The facility shall be maintained by the developer for a three-year period from the conditional acceptance of the public improvements. A written evaluation of the operation and maintenance shall be submitted and approved prior to acceptance for maintenance by the City. Once the three-year maintenance period is completed, the City will inspect the facility and make note of any problems that have arisen and require them to be resolved before the City will take over maintenance of the facility. In addition, the City will not take over maintenance of the facility unless 80 percent of the landscaping is established and healthy. If at any time during the

maintenance period, the landscaping falls below the 80 percent level, the developer shall immediately reinstall all deficient planting at the next appropriate planting opportunity.

17. An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to the "Erosion Prevention and Sediment Control Design and Planning Manual, December 2000 edition."
18. A final grading plan shall be submitted showing the existing and proposed contours. The plan shall detail the provisions for surface drainage of all lots, and show that they will be graded to ensure the surface drainage is directed to the street or a public storm drainage system approved by the Engineering Department. For situations where the back portions of lots drain away from a street and toward adjacent lots, appropriate private storm drainage lines shall be provided to sufficiently contain and convey runoff from each lot.
19. The applicant shall incorporate the recommendations from the submitted geotechnical report by GeoPacific Engineering, Inc., dated May 9, 2003, into the final grading plan. The applicant shall have the geotechnical engineer ensure that all grading, including cuts and fills, are constructed in accordance with the approved plan and Appendix Chapter 33 of the UBC. A final construction supervision report shall be filed with the Engineering Department prior to issuance of building permits.
20. The design engineer shall indicate, on the grading plan, which lots will have natural slopes between 10% and 20%, as well as lots that will have natural slopes in excess of 20%. This information will be necessary in determining if special grading inspections and/of permits will be necessary when the lots develop.
21. The final construction plans shall be signed by the geotechnical engineer to ensure that they have reviewed and approved the plans. The geotechnical engineer shall also sign the as-built grading plan at the end of the project.
22. The applicant shall obtain a 1200-C General Permit issued by the City of Tigard pursuant to ORS 468.740 and the Federal Clean Water Act.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO APPROVAL OF THE FINAL PLAT:**

**Submit to the Planning Department (Morgan Tracy, 639-4171, ext 2428) for review and approval:**

23. Prior to approval of the final plat, the applicant shall revise the plat to accommodate a minimum of 25 feet of frontage for all lots within the development.
24. Submit a revised street tree/landscape plan that shows an alternative tree species used for the public street to vary the streetscape.
25. The applicant shall provide joint access within an easement or tract to Lots 28 and 29 and cause a statement to be placed on the plat limiting additional direct vehicular access to SW 74<sup>th</sup> Avenue.
26. Provide a plat name reservation approval from Washington County.

27. Prior to final subdivision plat approval, the applicant shall convey title for the proposed open space to a homeowner's association in accordance with the requirements of Section 18.350.110.A.2.b of the Tigard Development Code.

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28. Prior to approval of the final plat the applicant shall obtain a plumbing permit for the construction of the private storm line in the private street.
29. Prior to approval of the final plat, the applicant shall pay an addressing fee in the amount of \$900.00 (Staff Contact: Shirley Treat, Engineering).
30. Prior to approval of the final plat, the applicant shall cause a statement to be placed on the final plat to indicate that the proposed private street(s) will be jointly owned and maintained by the private property owners who abut and take access from it (them).
31. Prior to approval of the final plat, the applicant shall prepare Conditions, Covenants and Restrictions (CC&R's) for this project, to be recorded with the final plat, that clearly lays out a maintenance plan and agreement for the proposed private street(s). The CC&R's shall obligate the private property owners within the subdivision to create a homeowner's association to ensure regulation of maintenance for the street(s). The CC&R's shall additionally establish restrictions regarding the removal of trees greater than 12 inches in diameter from any of the lots or tracts following completion of the subdivision improvements. Trees may only be allowed to be removed subject to a certified arborist's finding that the trees are dead, or in severe decline. The applicant shall submit a copy of the CC&R's to the Engineering Department (Kim McMillan) and the Planning Department (Morgan Tracy) prior to approval of the final plat.
32. Prior to approval of the final plat, the applicant shall demonstrate that they have formed and incorporated a homeowner's association.
33. Prior to approval of the final plat, the applicant shall either place the existing overhead utility lines along SW 74<sup>th</sup> Avenue underground as a part of this project, or they shall pay the fee in-lieu of under grounding. The fee shall be calculated by the frontage of the site that is parallel to the utility lines and will be \$27.50 per lineal foot. If the fee option is chosen, the amount will be \$11,578.00 and it shall be paid prior to final plat approval.
34. Prior to approval of the final plat, the applicant shall provide a maintenance access road to the facility and any drainage structures within the facility to accommodate City maintenance vehicles. The access road shall be paved and have a structural section capable of accommodating a 50,000-pound vehicle. The paved width shall be a minimum of 10 feet wide, and there shall be two-foot rock shoulders provided on each side. If the maintenance roadway is over 150 feet in length, a turnaround shall be provided.
35. The applicant's final plat shall contain State Plane Coordinates on two monuments with a tie to the City's global positioning system (GPS) geodetic control network (GC 22). These monuments shall be on the same line and shall be of the same precision as required for the subdivision plat boundary. Along with the coordinates, the plat shall contain the scale factor to convert ground measurements to grid measurements and the angle from north to grid north. These coordinates

can be established by:

- GPS tie networked to the City's GPS survey.
- By random traverse using conventional surveying methods.

36. Final Plat Application Submission Requirements:

- A. Submit for City review four (4) paper copies of the final plat prepared by a land surveyor licensed to practice in Oregon, and necessary date or narrative.
- B. Attach a check in the amount of the current final plat review fee (Contact Planning/Engineering Permit Technicians, at (503) 639-4171, ext. 426).
- C. The final plat and date or narrative shall be drawn to the minimum standards set forth by the Oregon Revised Statutes (ORS 92.05), Washington County, and by the City of Tigard.
- D. The right-of-way dedication for 74<sup>th</sup> Avenue shall be made on the final plat.
- E. Note: Washington County will not begin their review of the final plat until they receive notice from the Engineering Department indicating that the City has reviewed the final plat and submitted comments to the applicant's surveyor.
- F. After the City and County have reviewed the final plat, submit two mylar copies of the final plat for City Engineer signature (for partitions), or City Engineer and Community Development Director signatures (for subdivisions).

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO ISSUANCE OF BUILDING PERMITS:**

**Submit to the Planning Department (Morgan Tracy, 639-4171, ext. 2428) for review and approval:**

37. Prior to issuance of any building permits, re-plant any area where vegetation has been removed as a result of grading in conformance with the Clean Water Services Standards as set forth in the site assessment file #2819, prior to obtaining building permits.
38. Prior to issuance of any building permits, the applicant shall submit plans that show one (1) off-street parking space, which meets minimum dimensional requirements and setback requirements as specified in Title 18, provided on-site for each new home.
39. At the time of application for building permits for individual homes, the applicant shall demonstrate that each site will be accessed by a minimum 10-foot-wide paved access.
40. Prior to the issuance of building permits, the developer shall sign a copy of the City's sign compliance agreement.
41. Prior to the issuance of building permits the applicant shall submit a revised plan that indicates the modified setbacks as set forth in this decision and record a copy of the approved setback plan with the deeds for each lot.
42. Prior to issuance of building permits for structures on the individual lots within this development, the applicant shall demonstrate compliance with the height requirement of the underlying zone. The requirement calls for 30-foot maximum height for primary units and 15 feet maximum for all accessory structures.

43. Prior to the issuance of building permits on any lot, the applicant must provide city staff with a letter from Clean Water Services that indicates compliance with the approved service provider letter (#2819).

**Submit to the Engineering Department (Kim McMillan, 639-4171, ext. 2642) for review and approval:**

44. Prior to issuance of building permits the applicant's engineer shall provide a post-construction sight distance certification for the new intersection at 74<sup>th</sup> Avenue.
45. The City Engineer may determine the necessity for, and require submittal and approval of, a construction access and parking plan for the home building phase. If the City Engineer deems such a plan necessary, the applicant shall provide the plan prior to issuance of building permits.
46. Prior to issuance of building permits, the City Engineer shall deem the public improvements substantially complete. Substantial completion shall be when: 1) all utilities are installed and inspected for compliance, including franchise utilities, 2) all local residential street have at least one lift of asphalt, 3) any off-street and/or utility improvements are substantially completed, and 4) all street lights are installed and ready to be energized. Note: The City apart from this condition, and in accordance with the City's model home policy may issue model home permits).
47. Prior to issuance of building permits, the applicant shall provide the City with as-built drawings of the public improvements as follows: 1) 3 mil mylar, 2) a diskette of the as-builts in "DWG" format, if available; otherwise "DXF" will be acceptable, and 3) the as-built drawings shall be tied to the City's GPS network. The applicant's engineer shall provide the City with an electronic file with points for each structure (manholes, catch basins, water valves, hydrants and other water system features) in the development, and their respective X and Y State Plane Coordinates, referenced to NAD 83 (91).
48. Prior to issuance of building permits, the applicant shall provide the Engineering Department with a "photo mylar" copy of the recorded final plat.
49. The applicant shall provide signage at the entrance of each shared flag lot driveway or private street that lists the addresses that are served by the given driveway or street.

**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO ISSUANCE OF FINAL BUILDING INSPECTION:**

50. The applicant shall install street trees and an evergreen hedge of Leyland Cypress spaced no greater than three feet on center along the northern property line of Lots 1-10 and the eastern property line of Lots 10-12.

**ADDITIONAL CONDITIONS OF APPROVAL  
FOR ASH CREEK ESTATES:**

51. The applicant and future owners of lots within the development shall ensure that the requirements of CDC 18.725 (Environmental Performance Standards) are complied with at all times.

We hope the findings provided above can be included in the Final Order of the City Council regarding the

approval of Ash Creek Estates Subdivision. Feel free to contact us if there is any additional information required for your report.

Sincerely,

Steve Kay  
Kurahashi and Associates

cc. Morgan Tracy  
Associate Planner  
City of Tigard



**STAFF REPORT TO THE  
PLANNING COMMISSION  
FOR THE CITY OF TIGARD, OREGON**



**120 DAYS = 10/2/2003**

## **SECTION I. APPLICATION SUMMARY**

<b>FILE NAME:</b>	<b>ASH CREEK ESTATES SUBDIVISION</b>	
<b>CASE NOS.:</b>	<b>Subdivision (SUB)</b> Zone Change (ZON) Planned Development Review (PDR) Sensitive Lands Review (SLR) Adjustment (VAR) Adjustment (VAR)	<b>SUB2003-00010</b> <b>ZON2003-00003</b> <b>PDR2003-00004</b> <b>SLR2003-00005</b> <b>VAR2003-00036</b> <b>VAR2003-00037</b>

**APPLICANT:** Dale Richards  
Winwood Construction  
12655 SW North Dakota Street  
Tigard, OR 97223

**OWNER:** Ernest E. and Elda H. Senn  
9750 SW 74<sup>th</sup> Avenue  
Tigard, OR 97223

**PROJECT CONTACT:** Kurahashi and Associates  
Attn: Greg Kurahashi  
15580 SW Jay, Suite 200  
Beaverton, OR 97006

**REQUEST:** Approval of a 29-lot Subdivision and Planned Development on 9.3 acres. The lots are proposed to be developed with detached single-family homes. Lot sizes within the development are proposed to be between 4,702 and 11,616 square feet. Sensitive Lands Review is required as the project includes areas of steep (>25%) slopes, a drainageway and wetlands. The applicant is also seeking an Adjustment to the cul-de-sac length standard, maximum number of units permitted on a cul-de-sac, as well as an Adjustment to the street grade on SW 74<sup>th</sup> Avenue.

**ZONING DESIGNATION:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally.

**LOCATION:** 9750 SW 74<sup>th</sup> Avenue; WCTM 1S125DC, Tax Lots 300 and 400.

**APPLICABLE REVIEW CRITERIA:** Community Development Code Chapters 18.350, 18.370, 18.380, 18.390, 18.430, 18.510, 18.705, 18.715, 18.725, 18.745, 18.755, 18.765, 18.790, 18.795 and 18.810.

## **SECTION II. STAFF RECOMMENDATION**

Staff recommends that the Planning Commission find that the proposed Planned Development and street adjustments will not adversely affect the health, safety and welfare of the City and meets the Approval Standards as outlined in this report. Therefore, Staff recommends **APPROVAL**, subject to the following recommended Conditions of Approval and Findings within the staff report:

## CONDITIONS OF APPROVAL

### THE FOLLOWING CONDITIONS SHALL BE SATISFIED PRIOR TO COMMENCING ANY ONSITE IMPROVEMENTS, INCLUDING GRADING, EXCAVATION AND/OR FILL ACTIVITIES:

**Submit to the Planning Department (Morgan Tracy, 639-4171, ext. 2428) for review and approval:**

1. Prior to site work, the applicant shall submit an arborist report with tree protection recommendations, and shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
2. Prior to site work, the applicant shall submit a complete set of construction documents with the tree locations for the City Arborists review.
3. Prior to site work, the applicant shall notify the City Arborist at least 48 hours prior to commencing construction when the tree protection measures are in place so that he may verify that the measures will function properly.
4. Prior to site work, the applicant shall provide evidence of all necessary approvals for work within the wetlands from US Army Corps of Engineers and the Division of State Lands.
5. Prior to site work, the drainage tract must be clearly identified in the field with permanent (preferably with minimum 4-foot-tall black chainlink) fencing so as to insure no grading or material is placed in this area. Any fencing that is damaged during construction must be replaced prior to final building inspection. If the damage is such that it will no longer effectively identify the tract, it shall be replaced/reinstalled immediately.
6. Prior to site work, a signed approval shall be included with the City's construction drawing packet.

**Submit to the Engineering Department (Kim McMillan, 639-4171, ext. 2642) for review and approval:**

7. Prior to approval of construction plans, the applicant shall pothole the City of Tualatin's main water transmission line to determine the exact location and condition of the pipe. The applicant shall notify the City of Tigard and the City of Tualatin 48 hours prior to the pothole inspections and when any construction activity will impact the pipe (such as placement of fill and excavation in the immediate vicinity) so that a representative from the City can be present.
8. Prior to commencing onsite improvements, a Public Facility Improvement (PFI) permit is required for this project to cover all infrastructure and any other work in the public right-of-way. Eight (8) sets of detailed public improvement plans shall be submitted for review to the Engineering Department. NOTE: these plans are in addition to any drawings required by the Building Division and should only include sheets relevant to public improvements. Public Facility Improvement (PFI) permit plans shall conform to City of Tigard Public Improvement Design Standards, which are available at City Hall and the City's web page ([www.ci.tigard.or.us](http://www.ci.tigard.or.us)).
9. The PFI permit plan submittal shall include the exact legal name, address and telephone number of the individual or corporate entity who will be designated as the "Permittee", and who will provide the financial assurance for the public improvements. For example, specify if the entity is a corporation, limited partnership, LLC, etc. Also specify the state within which the entity is incorporated and provide the name of the corporate contact person. Failure to provide accurate information to the Engineering Department will delay processing of project documents.
10. The applicant shall provide a construction vehicle access and parking plan for approval by the City Engineer. The purpose of this plan is for parking and traffic control during the public improvement construction phase. All construction vehicle parking shall be provided on-site. No construction vehicles or equipment will be permitted to park on the adjoining residential public streets. Construction vehicles include the vehicles of any contractor or subcontractor involved in the construction of site improvements or buildings proposed by this application, and shall include the vehicles of all suppliers and employees associated with the project.

11. The applicant shall submit construction plans to the Engineering Department as a part of the Public Facility Improvement permit, which indicate that they will construct a half-street improvement along the frontage of 74<sup>th</sup> Avenue. The improvements adjacent to this site shall include:
  - A. City standard pavement section for a neighborhood route, without bike lanes, from curb to centerline equal to 16 feet, with a minimum pavement width of 24 feet;
  - B. pavement tapers needed to tie the new improvement back into the existing edge of pavement shall be built beyond the site frontage;
  - C. concrete curb, or curb and gutter as needed;
  - D. storm drainage, including any off-site storm drainage necessary to convey surface and/or subsurface runoff;
  - E. 5-foot concrete sidewalk with a planter strip (unless adjusted);
  - F. street trees in the planter strip spaced per TDC requirements;
  - G. street striping;
  - H. streetlight layout by applicant's engineer, to be approved by City Engineer;
  - I. underground utilities;
  - J. street signs (if applicable);
  - K. driveway apron (if applicable);
  - L. adjustments in vertical and/or horizontal alignment to construct SW 74<sup>th</sup> Avenue in a safe manner, as approved by the Engineering Department; and
  - M. right-of-way dedication to provide 27 feet from centerline.
12. The applicant's Public Facility Improvement permit construction drawings shall indicate that full width street improvements, including traffic control devices, mailbox clusters, concrete sidewalks, driveway aprons, curbs, asphaltic concrete pavement, sanitary sewers, storm drainage, street trees, streetlights, and underground utilities shall be installed within the interior subdivision streets. Improvements shall be designed and constructed to local street standards.
13. A profile of 74<sup>th</sup> Avenue shall be required, extending 300 feet either side of the subject site showing the existing grade and proposed future grade.
14. The applicant's construction drawings shall show that the pavement and rock section for the proposed private street(s) shall meet the City's public street standard for a local residential street.
15. The applicant shall obtain approval from the Tualatin Valley Water District for the proposed water connection prior to issuance of the City's Public Facility Improvement permit.
16. Final design plans and calculations for the proposed public water quality/detention facility shall be submitted to the Engineering Department (Kim McMillan) as a part of the Public Facility Improvement plans. Included with the plans shall be a proposed landscape plan to be approved by the City Engineer. The proposed facility shall be dedicated in a tract to the City of Tigard on the final plat. As a part of the improvement plans submittal, the applicant shall submit an Operations and Maintenance Manual for the proposed facility for approval by the Maintenance Services Director. The facility shall be maintained by the developer for a three-year period from the conditional acceptance of the public improvements. A written evaluation of the operation and maintenance shall be submitted and approved prior to acceptance for maintenance by the City. Once the three-year maintenance period is completed, the City will inspect the facility and make note of any problems that have arisen and require them to be resolved before the City will take over maintenance of the facility. In addition, the City will not take over maintenance of the facility unless 80 percent of the landscaping is established and healthy. If at any time during the maintenance period, the landscaping falls below the 80 percent level, the developer shall immediately reinstall all deficient planting at the next appropriate planting opportunity.
17. An erosion control plan shall be provided as part of the Public Facility Improvement (PFI) permit drawings. The plan shall conform to the "Erosion Prevention and Sediment Control Design and Planning Manual, December 2000 edition."

18. A final grading plan shall be submitted showing the existing and proposed contours. The plan shall detail the provisions for surface drainage of all lots, and show that they will be graded to ensure that surface drainage is directed to the street or a public storm drainage system approved by the Engineering Department. For situations where the back portions of lots drain away from a street and toward adjacent lots, appropriate private storm drainage lines shall be provided to sufficiently contain and convey runoff from each lot.
19. The applicant shall incorporate the recommendations from the submitted geotechnical report by GeoPacific Engineering, Inc., dated May 9, 2003, into the final grading plan. The applicant shall have the geotech engineer review and approve the construction plans for the City's review and approval. The geotechnical engineer shall be employed by the applicant throughout the entire construction period to ensure that all grading, including cuts and fills, are constructed in accordance with the approved plan and Appendix Chapter 33 of the UBC. A final construction supervision report shall be filed with the Engineering Department prior to issuance of building permits.
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**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
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  - ♦ GPS tie networked to the City's GPS survey.
  - ♦ By random traverse using conventional surveying methods.
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  - A. Submit for City review four (4) paper copies of the final plat prepared by a land surveyor licensed to practice in Oregon, and necessary data or narrative.
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  - C. The final plat and data or narrative shall be drawn to the minimum standards set forth by the Oregon Revised Statutes (ORS 92.05), Washington County, and by the City of Tigard.
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  - E. **NOTE:** Washington County will not begin their review of the final plat until they receive notice from the Engineering Department indicating that the City has reviewed the final plat and submitted comments to the applicant's surveyor.
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**THE FOLLOWING CONDITIONS SHALL BE SATISFIED  
PRIOR TO ISSUANCE OF BUILDING PERMITS:**

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39. At the time of application for building permits for individual homes, the applicant shall demonstrate that each site will be accessed by a minimum 10-foot-wide paved access.
40. Prior to the issuance of building permits, the developer shall sign a copy of the City's sign compliance agreement.
41. Prior to the issuance of building permits the applicant shall submit a revised plan that indicates the modified setbacks as set forth in this decision (page 11) and record a copy of the approved setback plan with the deeds for each lot.
42. Prior to issuance of building permits for structures on the individual lots within this development, the applicant shall demonstrate compliance with the height requirement of the underlying zone. The requirement calls for a 30-foot maximum height for primary units and 15 feet maximum for all accessory structures.
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**Submit to the Engineering Department (Kim McMillan, 639-4171, ext. 2642) for review and approval:**

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47. Prior to issuance of building permits, the City Engineer shall deem the public improvements substantially complete. Substantial completion shall be when: 1) all utilities are installed and inspected for compliance, including franchise utilities, 2) all local residential streets have at least one lift of asphalt, 3) any off-site street and/or utility improvements are substantially completed, and 4) all street lights are installed and ready to be energized. (NOTE: the City apart from this condition, and in accordance with the City's model home policy may issue model home permits).
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49. Prior to issuance of building permits, the applicant shall provide the Engineering Department with a "photomylar" copy of the recorded final plat.
50. The applicant shall provide signage at the entrance of each shared flag lot driveway or private street that lists the addresses that are served by the given driveway or street.

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**IN ADDITION, THE APPLICANT SHOULD BE AWARE OF THE FOLLOWING SECTIONS OF THE COMMUNITY DEVELOPMENT CODE; THIS IS NOT AN EXCLUSIVE LIST:**

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**18.430.080 Improvement Agreement:**

Before City approval is certified on the final plat, and before approved construction plans are issued by the City, the Subdivider shall:

1. Execute and file an agreement with the City Engineer specifying the period within which all required improvements and repairs shall be completed; and

2. Include in the agreement provisions that if such work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the subdivider.

The agreement shall stipulate improvement fees and deposits as may be required to be paid and may also provide for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

**18.430.090 Bond:**

As required by Section 18.430.080, the subdivider shall file with the agreement an assurance of performance supported by one of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the State of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the State of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
3. Cash.

The subdivider shall furnish to the City Engineer an itemized improvement estimate, certified by a registered civil engineer, to assist the City Engineer in calculating the amount of the performance assurance.

The subdivider shall not cause termination of nor allow expiration of said guarantee without having first secured written authorization from the City.

**18.430.100 Filing and Recording:**

Within 60 days of the City review and approval, the applicant shall submit the final plat to the County for signatures of County officials as required by ORS Chapter 92.

Upon final recording with the County, the applicant shall submit to the City a mylar copy of the recorded final plat.

**18.430.070 Final Plat Application Submission Requirements:**

Three copies of the subdivision plat prepared by a land surveyor licensed to practice in Oregon, and necessary data or narrative.

The subdivision plat and data or narrative shall be drawn to the minimum standards set forth by the Oregon Revised Statutes (ORS 92.05), Washington County, and by the City of Tigard.

**STREET CENTERLINE MONUMENTATION SHALL BE PROVIDED AS FOLLOWS:**

**Centerline Monumentation**

In accordance with Oregon Revised Statutes 92.060, subsection (2), the centerline of all street and roadway rights-of-way shall be monumented before the City accepts a street improvement.

The following centerline monuments shall be set:

1. All centerline-centerline intersection points;
2. All cul-de-sac center points; and
3. Curve points, beginning and ending points (PC's and PT's).

All centerline monuments shall be set during the first lift of pavement.

**Monument Boxes Required**

Monument boxes conforming to City standards will be required around all centerline intersection points, cul-de-sac center points, and curve points.

The tops of all monument boxes shall be set to finished pavement grade.

## **18.810 Street & Utility Improvement Standards:**

### **18.810.120 Utilities**

All utility lines including, but not limited to those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface-mounted transformers, surface-mounted connection boxes, and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric lines operating at 50,000 volts or above.

### **18.810.130 Cash or Bond Required**

All improvements installed by the subdivider shall be guaranteed as to workmanship and material for a period of one year following acceptance by the City.

Such guarantee shall be secured by cash deposit or bond in the amount of the value of the improvements as set by the City Engineer.

The cash or bond shall comply with the terms and conditions of Section 18.810.180.

### **18.810.150 Installation Prerequisite**

No land division improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting or other requirements shall be undertaken except after the plans, therefore, have been approved by the City, permit fee paid and permit issued.

### **18.810.180 Notice to City Required**

Work shall not begin until the City has been notified in advance.

If work is discontinued for any reason, it shall not be resumed until the City is notified.

### **18.810.200 Engineer's Certification**

The land divider's engineer shall provide written certification of a form provided by the City that all improvements, workmanship and materials are in accord with current and standard engineering and construction practices, and are of high grade, prior to the City acceptance of the subdivision's improvements or any portion thereof for operation and maintenance.

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**THIS APPROVAL SHALL BE VALID FOR 18 MONTHS FROM THE EFFECTIVE DATE OF THE PLANNING COMMISSION'S DECISION.**

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## **SECTION III. BACKGROUND INFORMATION**

### **Site History**

The property is currently developed with one single-family residence and a couple of small outbuildings. An effort by surrounding neighbors to acquire this property for open space purposes was unsuccessful. A search of city records found no previous land use cases associated with this parcel.

### **Vicinity Information:**

The site is located in the northwest corner of the City limits, south of SW Taylor's Ferry Road, on the east side of SW 74<sup>th</sup> Avenue. The property is surrounded on all sides by single-family residences on lots that vary in size. There is a stream (Ash Creek) on the property that runs in an east west direction along the southern property boundary. This drainageway contains wetlands and areas of steep slopes.

### **Proposal Information:**

The applicant is proposing to subdivide the parcel into 29 lots for single-family residences. Because of the trees, wetlands, and slopes on the site, the applicant has requested a planned development to allow them to vary the underlying zoning standards to develop around these features. The applicant is also requesting an adjustment to allow a curb tight sidewalk as opposed to a sidewalk separated from the travel surface by a planter strip, and an adjustment to the cul-de-sac standards limiting the number of units on a cul-de-sac and the 200-foot maximum length permitted for a cul-de-sac.



## **SECTION IV. DECISION MAKING PROCEDURES, PERMITS AND USE**

### **USE CLASSIFICATION: SECTION 18.130.020**

**Lists the Use Categories.**

The applicant is seeking approval of a 29-lot subdivision on 9.3 acres. The lots are to be developed with detached single-family homes. The existing single-family home is to be demolished. Lot sizes within the development are between 4,702 and 11,616 square feet. The applicant is also proposing to set aside an approximate 4.15 acre open space tract for the drainageway and wetland area. A private street cul-de-sac is also proposed to extend from the public street stub into the property. The site is located within the R-4.5, Low Density Residential District. Planned Developments are permitted in all districts. The applicant has applied for conceptual and detailed planned development approval in conjunction with the subdivision.

### **SUMMARY LAND USE PERMITS: CHAPTER 18.310**

**Defines the decision-making type to which the land-use application is assigned.**

This is a Planned Development/Subdivision, which is defined as a Type III-PC Application. Adjustments are typically Type II Administrative decisions and Type III sensitive lands decisions are heard by the Tigard Hearings Officer; however, when applications are heard concurrently, the highest decision making body will make the decision on all matters, as described below.

### **DECISION MAKING PROCEDURES: CHAPTER 18.390**

**Describes the decision-making procedures.**

Type III procedures apply to quasi-judicial permits and actions that contain predominantly discretionary approval criteria. Type III-PC actions are decided by the Planning Commission with appeals to the City Council. Type III-HO actions are decided by the Hearings Officer with appeals to City Council. In cases where both the Hearings Officer and Planning Commission are involved, the Planning Commission has preferential jurisdiction, per Tigard Development Code (TDC) Section 18.390.080(D)(2)(a).

## **SECTION V. NEIGHBORHOOD COMMENTS**

The Tigard Community Development Code requires that property owners within 500 feet of the subject site be notified of the proposal, and be given an opportunity for written comments and/or oral testimony prior to a decision being made. In addition, the applicant is required to post the site with notice of the public hearing. Staff has verified that the site is posted. Staff has not received any written comments from any neighbors about this application. A number of nearby neighbors have expressed interest and concern about the subject proposal; however, no comments have been received since the application was received.

## **SECTION VI. APPLICABLE REVIEW CRITERIA AND FINDINGS**

### **GENERAL PLANNED DEVELOPMENT STANDARDS: CHAPTER 18.350**

The applicant has requested a Planned Development (PD) overlay zone change for the subject property. The PD overlay requires developers to follow the Planned Development process for any proposal on affected sites. The Planned Development chapter provides for flexibility in development design and allows deviation from certain standards of the base zone. The following addresses compliance with the process and applicable base zone standards.

#### **The Planned Development Process:**

**Section 18.350.030 states that there are three elements to the planned development approval process, as follows:**

- ♦ **The approval of the planned development overlay zone;**
- ♦ **The approval of the planned development concept plan; and**
- ♦ **The approval of the detailed development plan.**

This application is for all three elements of the planned development process, overlay zone, concept plan, and detailed plan.

**Applicability Of The Base Zone Development Standards:**

**Section 18.350.070 requires compliance to specific development standards: The provisions of the base zone are applicable as follows:**

**Lot dimensional standards:**

**The minimum lot size, lot depth and lot width standards shall not apply except as related to the density computation under Chapter 18.715;**

The lot sizes range between 4,702 and 11,616 square feet, and there are two tracts proposed to accommodate the private street and the proposed open space. The required lot size for the R-4.5 zoning district is 7,500 square feet unless an applicant specifically requests different lot sizes through the Planned Development (PD) process, as is the case for this proposal. The proposed lot widths have been varied, but all are 50 feet or wider on the building portion of the lots. Average lot depths range from approximately 68-153 feet deep. One of the lots (#29) does not have adequate frontage, and will be conditioned to be modified as described later in this report. The applicant has identified and detailed the requested lot dimensional standards for this development, and the minimum and maximum density requirements have been satisfied as discussed later in this report.

**Site coverage:**

**The site coverage provisions of the base zone shall apply;**

There is no site coverage requirement in the R-4.5 zone; therefore, this criterion is not applicable.

**Building height:**

**The building height provisions shall not apply; and**

The height restriction does not apply within a Planned Development as long as the developer proposes an alternative that is approved. In this case, the developer has not requested an alternative height requirement, but has indicated that the lots will be developed with single-family residences. Because it is not proposed to the contrary, development within this development will be subject to the height requirements of the underlying zone.

**Structure setback provisions:**

**Front yard and rear yard setbacks for structures on the perimeter of the project shall be the same as that required by the base zone unless otherwise provided by Chapter 18.360;**

The applicant has provided a site plan that illustrates building envelopes within the development. The applicant has proposed to maintain a 15-foot rear yard for all structures on lots 1-13, on the perimeter of the project. Lots 24-27 will require a 20-foot front yard, and proposed lot 29 will require a 10-foot south side yard, as it is considered a flag lot. The applicant has proposed specific reduced front yards on the interior of the project to reduce the need for deeper lots and to reduce the grading necessary to accommodate the homes. The applicant has requested that the required front yards within the development be adjusted to 8 feet for primary structures and porches. They have indicated that the setback to the face of garage is proposed to remain at 20 and 22.5 feet. This criterion is satisfied.

**The side yard setback provisions shall not apply except that all detached structures shall meet the Uniform Building Code (UBC) requirements for fire walls;**

The applicant has proposed reducing the side yard setbacks from 5 to 3 feet. Three feet is the minimum separation required for UBC compliance. It should be noted that no projections, such as chimneys or bay windows, shall be permitted to encroach into this side yard area. This criterion has been met.

**Front yard and rear yard setback requirements in the base zone setback shall not apply to structures on the interior of the project except that: (1) A minimum front yard setback of 20 feet is required for any garage structure which opens facing a street; (2) A minimum front yard setback of eight feet is required for any garage opening for an attached single-family dwelling facing a private street as long as the required off-street parking spaces are provided**

As described above, the lots provide a minimum 20-foot setback to the garage. The front and rear yards have been modified as shown in the applicant's plans, however, there are several setbacks that require modification to comply with the code standards as they are perimeter setbacks. Lot 27 is shown with a storm drainage easement. This will need to be set aside in a separate tract, and as such, Lot 27 will no longer front on SW 74<sup>th</sup>, making the front yard on the new public street. A 20-foot front yard setback will be required on this side, as it is a perimeter setback. Lot 29 is a flag lot and is subject to 10-foot side yard setbacks on the perimeter of the project. Additionally, staff recommends that standard rear yard setbacks be applied to the lots that have depths of 100 feet or more (#13-19) as a suitable building envelope has been provided through reduced front yard setbacks, and to further protect the sensitive land resource. A summary of these changes is shown in the following table:

Table 1. Modified Setbacks for Ash Creek PD

Lot #	Garage	Front	Rear	Side	Lot #	Garage	Front	Rear	Side
1	22.5'	8'	15'	15' 3/3'	16	20'	8'	3' 15'	3' 3/3'
2	22.5'	8'	15'	3' 3/3'	17	20'	8'	3' 15'	3' 3/3'
3	22.5'	8'	15'	3' 3/3'	18	20'	8'	3' 15'	3' 3/3'
4	22.5'	8'	15'	3' 3/3'	19	20'	8'	3' 15'	3' 3/3'
5	22.5'	8'	15'	3' 3/3'	20	20'	8'	3'	3' 3/3'
6	22.5'	8'	15'	3' 3/3'	21	20'	8'	3'	3' 3/3'
7	22.5'	8'	15'	3' 3/3'	22	20'	8'	3'	3' 3/3'
8	22.5'	8'	15'	3' 3/3'	23	20'	8'	3' 15'	3' 3/3'
9	22.5'	8'	15'	3' 3/3'	24	20'	20'	3'	3' 3/3'
10	22.5'	8'	15'	3' 3/3'	25	20'	20'	3'	3' 3/3'
11	22.5'	8'	15'	3' 3/3'	26	20'	20'	3'	3' 3/3'
12	20'	8'	15'	3' 3/3'	27	15' 20'	15' 20'	3'	3' 3/3'
13	20'	8'	3' 15'	3' 3/3'	28	15' 20'	15' 20'	3'	3' 3/3'
14	20'	8'	3' 15'	3' 3/3'	29	20'	20'	3'	3' 5' 10'
15	20'	8'	3' 15'	3' 3/3'					

With the changes outlined in the above table, this criterion has been met.

**FINDING:** Several perimeter setbacks do not meet standard code criteria. Staff recommends against the proposed reduced rear yard setbacks on several lots where lot depths exceed 100 feet.

**CONDITIONS:**

- ♦ Prior to the issuance of building permits on the individual structures within this development, the applicant shall demonstrate compliance with the setbacks outlined in the above table. Moreover, the applicant shall submit a revised plan that indicates the modified setbacks and record a copy of the setback plan with the deeds for each lot.
- ♦ Prior to issuance of building permits for structures on the individual lots within this development, the applicant shall demonstrate compliance with the height requirement of the underlying zone. The requirement calls for a 30-foot maximum height for primary units and 15 feet maximum for all accessory structures.

**Other provisions of the base zone:**

**All other provisions of the base zone shall apply except as modified by this chapter.**

Any additional provisions of the base zone are discussed within the body of this report or will be reviewed during the building permit phase.

**FINDING:** The base zone standards that are related to the previously discussed criteria have been satisfied.

## **PD Approval Criteria: 18.350.100**

**Specific planned development approval criteria.** The Commission shall make findings that the following criteria are satisfied when approving or approving with conditions, the concept plan. The Commission shall make findings that the criteria are not satisfied when denying an application.

**All the provisions of the land division provisions, Chapters 18.410, 18.420 and 18.430, shall be met;**

The applicant has applied to subdivide the property concurrently with the planned development approval; therefore, all subdivision criteria must be satisfied. Compliance with the subdivision approval criteria is discussed in greater detail in Chapter 18.430. The application has met or can be conditioned such that the subdivision provisions are satisfied. This criterion is satisfied.

**Except as noted, the provisions of the following chapters shall be utilized as guidelines. A planned development need not meet these requirements where a development plan provides alternative designs and methods, if acceptable to the Commission, that promote the purpose of this section. In each case, the applicant must provide findings to justify the modification of the standards in the chapters listed in Subsection 3 below. The developer may choose to provide or the commission may require additional open space dedication and/or provision of additional amenities, landscaping or tree planting.**

**Chapter 18.715, Density Computation and Limitations.** Unless authorized below, density shall be governed by the density established in the underlying zoning district. The Commission may further authorize a density bonus not to exceed 10% as an incentive to increase or enhance open space, architectural character and/or site variation incorporated into the development. These factors must make a substantial contribution to objectives of the planned development. The degree of distinctiveness and the desirability of variation achieved shall govern the amount of density increase which the Commission may approve according to the following:

- ♦ A maximum of 3% is allowed for the provision of undeveloped common space;
- ♦ A maximum of 3% is allowed for landscaping; streetscape development; developed open spaces, plazas and pedestrian pathways and related amenities; recreation area development; and/or retention of existing vegetation;
- ♦ A maximum of 3% is allowed for creation of visual focal points; use of existing physical amenities such as topography, view, and sun/wind orientation;
- ♦ A maximum of 3% quality of architectural quality and style; harmonious use of materials; innovative building orientation or building grouping; and/or varied use of housing types.

The applicant has not requested any density bonuses. Density will be discussed later in this report under Chapter 18.715.

### **Chapter 18.730, Exceptions to Development Standards;**

None apply. This criterion is not applicable.

### **Chapter 18.795, Visual Clearance Areas;**

The applicants plans show the areas for visual clearance at street intersections. These areas, as well as the areas at the intersection of the driveways and the street will need to be maintained free from obstructions taller than three feet in height. Any violations of this chapter will be remedied through code enforcement.

### **Chapter 18.745, Landscaping and Screening;**

This is a detached single-family proposal adjacent to detached single-family homes. As such, there are no requirements for screening or buffering from neighboring properties. However, as discussed later in this report, the applicant is required to landscape at least 20% of the site within a Planned Development. The applicant has provided a street tree plan for SW 74<sup>th</sup> Avenue and proposes to leave the open space tract in its natural state.

### **Chapter 18.765, Off-street Parking and Loading Requirements;**

The applicant has proposed that all homes will be provided with 2-car garages and at least 20 feet in front of the garages, which should provide more than enough parking for the development. The applicant has also designed the street with adequate width to allow parking on one side of the street. The minimum requirement for household living is one space for every unit. This criterion is satisfied.

### **Chapter 18.705, Access, Egress and Circulation; and**

The applicant has indicated in the narrative that each lot will be served by a driveway to a public or private street. The minimum required width for a driveway is 10-feet, which will be assured at time of building permit review. The proposed private street improvements are evaluated under discussion of compliance with street and utility standards in Chapter 18.810 later in this report.

### **Chapter 18.780, Signs.**

No signs are proposed in conjunction with this development. Any future signage will be subject to the sign permit requirements in Chapter 18.780. There has been a proliferation of sign violations from new subdivisions. In accordance with a new policy adopted by the Director's Designee, all new subdivisions must enter into a sign compliance agreement to facilitate a more expeditious court process for citations.

**FINDING:** Staff finds that the proposed development is consistent with the guidelines listed in the Planned Development Section 18.350.100.B.2. To expedite enforcement of sign violations, a sign compliance agreement will be required.

**CONDITION:** Prior to the issuance of building permits, the developer shall sign a copy of the City's sign compliance agreement.

**In addition, the following criteria shall be met:**

#### **Relationship to the natural and physical environment:**

**The streets, buildings and other site elements shall be designed and located to preserve the existing trees, topography and natural drainage to the greatest degree possible;**

The site is constrained naturally by steep slopes, wetlands, and the drainageway that bisects the property along the southern property boundary. The property is in forest timber deferral through Washington County and is, therefore, not subject to the tree removal ordinance with the exception of the trees in the sensitive lands areas.

The applicant has proposed to remove all the trees within the developable area, and retain the vast majority of trees in the open space tract, except where public facility improvements necessitate tree removal. While this is permissible under existing rules and no mitigation is required by the code, it is unclear to staff how the above standard is being met when opportunities exist to preserve several trees outside the building envelopes and grading areas. The Planning Commission will need to determine whether the preservation of the trees within the open space tract satisfies this standard.

With regard to preservation of topography and natural drainage, it's clear that effort was taken to preserve as much as possible of these features in their natural state. The road width has been reduced in conjunction with public easements and reduced setbacks to minimize the degree of grading required to accommodate the roadway, for both the private street and the extension of SW 74<sup>th</sup>. The drainageway area will be slightly impacted by the proposed (and City required) crossing of SW 74<sup>th</sup>. This impact will be minimized by utilizing oversized culverts and retaining walls to limit the amount of fill encroachment into the corridor.

### **Structures located on the site shall not be in areas subject to ground slumping and sliding;**

The site is characterized with several areas of slopes greater than 25%, and in limited cases up to 50% slope. From the applicant's geotech report, there is one area where previous land slumping has occurred, southwest of the existing residence in the open space tract. The applicant's geotech report notes the locations of construction limits where no further geotechnical study is required, which generally coincide with the rear lot lines of lots 13-27. There are two notable exceptions, on lots 13, 14, and 15 and between lots 22 and 23 where the slopes are steeper, and groundwater was encountered for one of the test pits. The geotech report contains recommendations to address stability of structures and fill on the project site, and requires further study in those two areas. The recommendations of that report will be required as a recommended condition of approval.

**There shall be adequate distance between on-site buildings and other on-site and off-site buildings on adjoining properties to provide for adequate light and air circulation and for fire protection;**

The current proposal does not call for any reduced setbacks along the rear yards of lots 1-12. The open space tract provides ample separation for air circulation and light penetration. The street and front yard setbacks will establish a 46-foot separation between the fronts of the homes. The side yard setbacks have been proposed to be reduced to 3 feet which complies with the UBC without the need for additional rated firewalls. Due to the reduced side yards, no projections into the amended side yards will be allowed. This criterion is satisfied.

**The structures shall be oriented with consideration for the sun and wind directions, where possible; and**

The proposed structures will be oriented with considerations for sun and wind to the extent practical. The majority of the lots are oriented in a north-south direction providing for opportunities to maximize southern glazing exposure.

**Trees preserved to the extent possible. Replacement of trees is subject to the requirements of Chapter 18.790, Tree Removal.**

Trees are preserved in the open space tract to the maximum extent possible for this proposal. Trees outside the sensitive lands area are exempt from the tree removal standards as the property is subject to a forest deferral.

**Buffering, screening and compatibility between adjoining uses:**

**Buffering shall be provided between different types of land uses, e.g., between single-family and multi-family residential, and residential and commercial uses;**

Because the proposed development is for single-family homes in an area characterized by single-family development, the Tigard Development Code (TDC) does not require any additional buffering. This criterion is inapplicable.

**In addition to the requirements of the buffer matrix (Table 18.745.1), the following factors shall be considered in determining the adequacy and extent of the buffer required under Chapter 18.745:**

- ♦ **The purpose of the buffer, for example to decrease noise levels, absorb air pollution, filter dust, or to provide a visual barrier;**
- ♦ **The size of the buffer needs in terms of width and height to achieve the purpose;**
- ♦ **The direction(s) from which buffering is needed;**
- ♦ **The required density of the buffering; and**
- ♦ **Whether the viewer is stationary or mobile.**

As stated previously, there is no requirement for buffering between existing single-family homes and new single-family homes. This criterion is inapplicable.

**On-site screening from view from adjoining properties of such activities as service areas, storage areas, parking lots and mechanical devices on roof tops shall be provided and the following factors shall be considered in determining the adequacy of the type and extent of the screening: (a) What needs to be screened; (b) The direction from which it is needed; and (c) Whether the screening needs to be year- round.**

There are no specific service areas, storage areas, parking lots or mechanical devices proposed with this development. No additional screening is required. This criterion is satisfied.

**Privacy and noise:**

**Non-residential structures which abut existing residential dwellings shall be located on the site or be designed in a manner, to the maximum degree possible, to protect the private areas on the adjoining properties from view and noise; Private outdoor area -- multi-family use: Shared outdoor recreation areas -- multi-family use:**

These criteria relate to non-residential or multi-family structures and are not applicable to the proposed single-family development.

**Access and circulation:**

**The number of allowed access points for a development shall be provided in Chapter 18.705;**

Each lot will have direct frontage to a public or private street. Staff recommends that to reduce the number of driveways on SW 74<sup>th</sup> a Neighborhood Route, lots 28 and 29 should share access. This will be discussed later in this report.

**All circulation patterns within a development must be designed to accommodate emergency vehicles; and**

Comments from Tualatin Valley Fire and Rescue (TVF & R) indicate that the proposed circulation system for the development is acceptable if their conditions are addressed. See Section VIII of this report for more details.

**Provisions shall be made for pedestrian and bicycle ways if such facilities are shown on an adopted plan.**

The project fronts on SW 74<sup>th</sup> Avenue, which is a neighborhood route but has not been designated for bike lanes. This criterion does not apply.

**Landscaping and open space:**

**Residential Development: In addition to the requirements of subparagraphs (4) and (5) of section a of this subsection, a minimum of 20 percent of the site shall be landscaped;**

The open space and drainage tracts of this proposal constitute approximately 44% of the site area. The applicant has indicated that landscaping on the lots will be accomplished by each homeowner separately. The project will exceed the minimum 20% landscape criteria. There is no landscape plan for the open space tract, however, areas of steep slopes that are disturbed are required to be replanted per the recommendations of the applicant's geotech report. Areas within the drainageway and wetlands will require mitigation replanting per the requirements of Clean Water Services and the Division of State Lands. This criterion has been met.

**Public transit:**

**Provisions for public transit may be required where the site abuts a public transit route. The required facilities shall be based on:**

- ♦ The location of other transit facilities in the area; and
- ♦ The size and type of the proposed development

**The required facilities shall be limited to such facilities as:**

- ♦ A waiting shelter;
- ♦ A turn-out area for loading and unloading; and
- ♦ Hard surface paths connecting the development to the waiting area

This site does not abut a public transit route and, therefore, this criterion is not applicable.

**Signs:**

No signage is proposed with this application. Any future signage will require a permit in compliance with the sign code.

**Parking:**

**All parking and loading areas shall be generally laid out in accordance with the requirements set forth in Chapter Chapter 18.765;**

**Up to 50% of required off-street parking spaces for single-family attached dwellings may be provided on one or more common parking lots within the planned development as long as each single-family lot contains one off-street parking space.**



Parking can comply with all applicable requirements of Chapter 18.765.

**Drainage:**

**All drainage provisions shall be generally laid out in accordance with the requirements set forth in Chapter 18.775, and the criteria in the adopted 1981 master drainage plan;**

Storm drainage complies, or will be conditioned to comply with applicable City of Tigard and Clean Water Services (CWS) requirements. For a more detailed discussion of storm drainage, see the discussion of compliance with the requirement of Chapter 18.810 later in this report.

**Floodplain dedication:**

**Where landfill and/or development is allowed within or adjacent to the 100-year floodplain, the City shall require consideration of the dedication of sufficient open land area for a greenway adjoining and within the floodplain. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway with the floodplain in accordance with the adopted pedestrian bicycle pathway plan.**

No areas within the 100-year floodplain exist on the site. The applicant's narrative erroneously refers to areas of "100-year floodplain" but this is in fact areas of 25-year floodplain used to identify the extent of the drainageway. Since there are no 100-year floodplains on the property, this criterion is not applicable.

**FINDING:** The proposed development complies, or can be conditioned to comply with all planned development approval criteria contained in Section 18.350.100 of the Tigard Development Code.

**Shared Open Space:**

**Requirements for shared open space:**

**Where the open space is designated on the plan as common open space the following applies:**

- ♦ The open space area shall be shown on the final plan and recorded with the Director; and
- ♦ The open space shall be conveyed in accordance with one of the following methods:

**By dedication to the City as publicly-owned and maintained as open space. Open space proposed for dedication to the City must be acceptable to it with regard to the size, shape, location, improvement and budgetary and maintenance limitations;**

**By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity, with the City retaining the development rights to the property. The terms of such lease or other instrument of conveyance must include provisions suitable to the City Attorney for guaranteeing the following:**

- ♦ The continued use of such land for the intended purposes;
- ♦ Continuity of property maintenance;
- ♦ When appropriate, the availability of funds required for such maintenance;
- ♦ Adequate insurance protection; and
- ♦ Recovery for loss sustained by casualty and condemnation or otherwise.

**By any method which achieves the objectives set forth in Subsection 2 above of this section.**

The applicant has indicated that the open space areas on the site will be conveyed to the developments' Homeowner's Association. To ensure compliance with City of Tigard standards, the following condition shall apply:

**CONDITION:** Prior to final subdivision plat approval, the applicant shall convey title for the proposed open space to a Homeowner's Association in accordance with the requirements of Section 18.350.110.A.2.b of the Tigard Development Code.



**Special adjustments 18.370:**

**Adjustments to development standards within subdivisions (Chapter 18.430).** The Director shall consider the application for adjustment at the same time he/she considers the preliminary plat. An adjustment may be approved, approved with conditions, or denied provided the Director finds:

The applicant is requesting an adjustment to the street improvement standards on SW 74<sup>th</sup> Avenue, and an adjustment to the cul-de-sac standards. Under the new Transportation System Plan, the development is required to provide a planter strip between the curb and sidewalk. The applicant is requesting an adjustment to the standard to allow the sidewalk to be curb tight in order to reduce the amount of fill required in the drainageway area. Also, the applicant has requested an adjustment to allow the proposed private street cul-de-sac to exceed the 200-foot length standard by 420 feet, and to permit 23 homes on the cul-de-sac as opposed to the code maximum of 20 homes. These adjustments are discussed simultaneously in the following discussion.

**There are special circumstances or conditions affecting the property, which are unusual and peculiar to the land as compared to other lands similarly situated;**

In the case of the curb tight sidewalk, the site plan indicates the areas of sensitive resources, including Ash Creek, and the associated wetlands. If a 5-foot planter strip was required, then an approximate 1,100 additional square feet of impact to the drainageway and wetland areas would occur. The unusual circumstance for this property is the presence of the stream and the fact that the development is required to cross the stream for street connectivity. In areas outside of the resource corridor, the sidewalk will meet the public street standards for sidewalks. This criterion is satisfied.

In reference to the adjustment to allow the cul-de-sac length to exceed 200 feet as opposed to the proposed 620 feet, the presence of the sensitive lands and stream corridor limit the developable width of the property, such that a looped street system is not feasible. The presence of existing development to the south (Washington Square Estates), east (Washington Square Estates II), and north (the Raspberry Patch) precludes future street extensions. The applicant's plans propose a public street that will terminate at approximately 1/3 the total depth of the development site. While a connection further east could be accommodated, the applicant's proposal provides for future development potential of the northern lot, as well as, creates a better alignment for ultimate extension of SW 73<sup>rd</sup> Avenue. There are specific topography constraints, as well as existing development patterns that limit the ability of the applicant to extend a road all the way through the development to eliminate the cul-de-sac. The resulting length of this cul-de-sac is the primary reason for the need to exceed the 20 home maximum on the cul-de-sac to a total of 23 homes. This criterion is satisfied.

**The adjustment is necessary for the proper design or function of the subdivision;**

The adjustment for the curb tight sidewalk standard is necessary for the design of this subdivision to reduce impacts on the natural resources on the site. This criterion is satisfied.

The adjustment requested for the cul-de-sac length is necessary to provide access to lots 3-19 of this subdivision. A standard dimensioned cul-de-sac bulb has been proposed to serve emergency equipment and garbage trucks. This criterion is satisfied.

**The granting of the adjustment will not be detrimental to the public health, safety, and welfare or injurious to the rights of other owners of property; and**

Granting of the adjustments would not be detrimental to the health, safety and welfare, nor, is there any evidence to suggest that the adjustments would be injurious to the rights of other owners of property surrounding the site. The Fire District has reviewed and commented and offered no objection to these adjustments. The private street will be required to meet fire district standards for width and construction.

**The adjustment is necessary for the preservation and enjoyment of a substantial property right because of an extraordinary hardship, which would result from strict compliance with the regulations of this title.**

In order to develop the property in the proposed manner, the applicant would need to request the adjustments to the standards for street improvements and the cul-de-sac length. These adjustments are necessary in order to develop the property as proposed.

**FINDING:** The criteria for granting the adjustments to the street design and the cul-de-sac length standards have been satisfied. The adjustments are requested to accommodate this development specifically because of the natural resources and shape of the resulting buildable area of the lot, as well as the consideration of pre-existing development patterns in the area that would not permit compliance with the applicable chapters of the TDC.

**Zone Change: Standards for Making Quasi-Judicial Decisions: Chapter 18.380**

**A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial zoning map amendment shall be based on all of the following standards:**

**Demonstration of compliance with all applicable comprehensive plan policies and map designations;**

The Development Code implements the goals and policies of the Comprehensive Plan and planned developments are permitted in all districts when they meet the code criteria of the Development Code. This criterion is satisfied.

**Demonstration of compliance with all applicable standards of any provision of this code or other applicable implementing ordinance; and**

According to the analysis of sections below, the proposed zone change is, or has been conditioned to ensure compliance with the requirements for planned development (PD) in Section 18.350.020 and all other applicable requirements.

**Evidence of change in the neighborhood or community or a mistake or inconsistency in the comprehensive plan or zoning map as it relates to the property which is the subject of the development application.**

There is no change in circumstances or inconsistencies to the Comprehensive Plan or Zoning Map that warrants a zone change from the underlying zone. However, a zone change is necessary to place the PD overlay designation on the property. This criterion is inapplicable.

**FINDING:** The proposal satisfies the criteria for a zone change to place the Planned Development Overlay zoning onto the property.

**Preliminary Subdivision Plat Approval Criteria: 18.430.040**

**Approval criteria:**

**The Approval Authority may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:**

**The proposed preliminary plat complies with the applicable zoning ordinance and other applicable ordinances and regulations;**

As illustrated in this report, the proposed plat complies with the zoning ordinance and other applicable ordinances and regulations.

**The proposed plat name is not duplicative or otherwise satisfies the provisions of ORS Chapter 92;**

The applicant has not provided documentation of a plat name reservation; therefore, the applicant will need to provide an approved plat name reservation prior to final plat approval.

**The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the City determines it is in the public interest to modify the street or road pattern; and**

There are no street stubs to this property from adjacent properties. Existing development and topography limits the ability for this applicant to provide stubs for future road service to adjacent properties to the east and south; however, a street stub has been provided for the property to the north, and extension of the improvements to SW 74<sup>th</sup> Avenue to the south is also proposed. This criterion has been met.

**An explanation has been provided for all common improvements.**

The applicant has provided an explanation for all common improvements.

**FINDING:** The proposed development complies with all preliminary subdivision criteria, however, the applicant will need to provide evidence that the plat name is not duplicative of others in Washington County.

**CONDITION:** Provide a plat name reservation approval from Washington County.

**ZONING DISTRICT**

**Residential Zoning District: Section 18.510.020**

**The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally.**

Planned Developments are permitted in all districts provided the application satisfies all applicable criteria.

**Development Standards: Section 18.510.050 States that Development standards in residential zoning districts are contained in Table 18.510.2 below:**

The subject site and the surrounding properties are all designated R-4.5, Low-Density Residential.

**EXCERPT FROM TABLE 18.510.2  
DEVELOPMENT STANDARDS IN RESIDENTIAL ZONES**

STANDARD	R-4.5	PROPOSED (PD)
Minimum Lot Size <ul style="list-style-type: none"><li>- Detached unit</li><li>- Duplexes</li><li>- Attached unit [1]</li></ul>	7,500 sq.ft. 10,000 sq.ft.	4,702-11,616 sq. ft. N/A N/A
Average Minimum Lot Width <ul style="list-style-type: none"><li>- Detached unit lots</li><li>- Duplex lots</li><li>- Attached unit lots</li></ul>	50 ft. 90 ft.	Varies 58 ft.+ N/A N/A
Maximum Lot Coverage	-	-
Minimum Setbacks <ul style="list-style-type: none"><li>- Front yard</li><li>- Side facing street on corner &amp; through lots</li><li>- Side yard</li><li>- Rear yard</li><li>- Side or rear yard abutting more restrictive zoning district</li><li>- Distance between property line and front of garage</li></ul>	20 ft.  15 ft. 5 ft. 15 ft.  20 ft.	8 ft.  15 ft. 3 ft. 15 ft. and 3 ft.  20 ft. and 22.5 ft.
Maximum Height	30 ft.	30 ft.
Minimum Landscape Requirement	-	20% For PD Overlay

[1] Single-family attached residential units permitted at one dwelling per lot with no more than five attached units in one grouping.

[2] Lot coverage includes all buildings and impervious surfaces.

**FINDING:** Since the proposed development is a Planned Development, these standards can be altered to fit a specific design. It should be noted that the applicant's narrative includes a table listing the various lot widths for each lot. The methodology utilized to establish these lot widths was incorrect. The width is measured at the front and rear yard setback and averaged to obtain the code specified lot width. In any case, the lot widths exceed the minimum requirement, and are authorized through the Planned Development process.

**ACCESS AND EGRESS: CHAPTER 18.705**

**Minimum access requirements for residential use: Section 18.705.030H.**

#### **Access Management (Section 18.705.030.H)**

**Section 18.705.030.H.1 states that an access report shall be submitted with all new development proposals which verifies design of driveways and streets are safe by meeting adequate stacking needs, sight distance and deceleration standards as set by ODOT, Washington County, the City and AASHTO.**

The applicant's engineer indicates that sight distance will be met. Staff recommends that the applicant's engineer provide a post-construction sight distance certification.

**Section 18.705.030.H.2 states that driveways shall not be permitted to be placed in the influence area of collector or arterial street intersections. Influence area of intersections is that area where queues of traffic commonly form on approach to an intersection. The minimum driveway setback from a collector or arterial street intersection shall be 150 feet, measured from the right-of-way line of the intersecting street to the throat of the proposed driveway. The setback may be greater depending upon the influence area, as determined from City Engineer review of a traffic impact report submitted by the applicant's traffic engineer. In a case where a project has less than 150 feet of street frontage, the applicant must explore any option for shared access with the adjacent parcel. If shared access is not possible or practical, the driveway shall be placed as far from the intersection as possible.**

74<sup>th</sup> Avenue is classified as a "Neighborhood Route". Taylor's Ferry Road is classified as a "Collector" street. The proposed new intersection of 74<sup>th</sup> Avenue and Street 'A' is not within the influence area of the 74<sup>th</sup> Avenue and Taylor's Ferry Road intersection.

**Section 18.705.030.H.3 and 4 states that the minimum spacing of driveways and streets along a collector shall be 200 feet. The minimum spacing of driveways and streets along an arterial shall be 600 feet. The minimum spacing of local streets along a local street shall be 125 feet.**

The proposed intersection is over 280 feet away from the intersection of 74<sup>th</sup> Avenue and Barbara Lane. Therefore, this standard is met.

**Vehicular access and egress for single-family, duplex or attached single-family dwelling units on individual lots and multi-family residential uses shall not be less than as provided in Table 18.705.1 and Table 18.705.2;**

**TABLE 18.705.1  
VEHICULAR ACCESS/EGRESS REQUIREMENTS:  
RESIDENTIAL USE (6 OR FEWER UNITS)**

<b>Dwelling Units</b>	<b>Minimum Number of Driveways Required</b>	<b>Minimum Access Width</b>	<b>Minimum Pavement Width</b>
1 or 2	1	15 feet	10 feet

The applicant has indicated in the narrative that each lot within the subdivision will have access to a public or private street and that each access will meet the 15-foot access requirement. It should be noted that staff will recommend a condition requiring joint access for lots 28 and 29, as discussed later in this report.

**FINDING:** All proposed lots will meet the required 15 feet of access frontage required for single-family dwellings. To ensure that the minimum width pavement requirement is met at the time of development of each parcel, the following condition shall apply:

**CONDITION:** At the time of application for building permits for individual homes, the applicant shall demonstrate that each site will be accessed by a minimum 10-foot-wide paved access.

**Vehicular access to multi-family structures shall be brought to within 50 feet of the ground floor entrance or the ground floor landing of a stairway, ramp, or elevator leading to the dwelling units.**

This is a proposal for a single-family development. This standard does not apply.

**Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.**

The individual homeowners will maintain the access drives once the property is developed and sold. The Tualatin Valley Fire and Rescue District has reviewed the proposal and the comments have been incorporated where necessary. This criterion is satisfied.

**Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus by one of the following:**

- ♦ **A circular, paved surface having a minimum turn radius measured from center point to outside edge of 35 feet;**
- ♦ **A hammerhead-configured, paved surface with each leg of the hammerhead having a minimum depth of 40 feet and a minimum width of 20 feet;**
- ♦ **The maximum cross slope of a required turnaround is 5%.**

There are no access drives proposed that would exceed 150 feet in length. This criterion has been met.

**Vehicle turnouts, (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet), may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.**

There are no proposed driveways in this development that exceed 200 feet in length. The deepest lot in the proposed development is 165 feet, therefore, this criterion does not apply.

**Where permitted, minimum width for driveway approaches to arterials or collector streets shall be no less than 20 feet so as to avoid traffic turning from the street having to wait for traffic exiting the site.**

The site is not adjacent to a collector or arterial. This standard does not apply.

**To provide for increased traffic movement on congested streets and to eliminate turning movement problems, the Director may restrict the location of driveways on streets and require the location of driveways be placed on adjacent streets, upon the finding that the proposed access would cause or increase existing hazardous traffic conditions; or provide inadequate access for emergency vehicles; or cause hazardous conditions to exist which would constitute a clear and present danger to the public health, safety, and general welfare.**

Since SW 74<sup>th</sup> is designated a neighborhood route, and will eventually be extended to connect to SW Locust Street, it is anticipated that traffic volumes will increase on this presently dead-ended road. To minimize traffic conflicts in this area where driveways may be difficult to see due to the vertical curves near the stream crossing, staff recommends that the two southern lots, #28 and 29 share access through one driveway approach. This driveway is required to be a minimum of 10 feet of paved width within a 15-foot easement or tract.

**FINDING:** The proposed development can comply with all applicable access, egress, and circulation requirements of Chapter 18.705. Joint access for lots 28 and 29 will improve traffic safety by reducing the number of access points onto this neighborhood route street.

**CONDITIONS:**

- ♦ The applicant shall provide joint access within an easement or tract to Lots 28 and 29 and cause a statement to be placed on the plat restricting additional direct vehicular access to SW 74<sup>th</sup> Avenue.
- ♦ At the time of application for building permits for individual homes, the applicant shall demonstrate that each site will be accessed by a minimum 10-foot-wide paved access.

## **DENSITY COMPUTATIONS: CHAPTER 18.715**

### **Density Calculation: 18.715.020**

#### **Definition of net development area.**

Net development area, in acres, shall be determined by subtracting the following land area(s) from the gross acres, which is all of the land included in the legal description of the property to be developed:

- ♦ All sensitive land areas: a. Land within the 100-year floodplain; b. Land or slopes exceeding 25%; c. Drainage ways; and d. Wetlands.
- ♦ All land dedicated to the public for park purposes;
- ♦ All land dedicated for public rights-of-way. When actual information is not available, the following formulas may be used: Single-family development: allocate 20% of gross acreage; Multi-family development: allocate 15% of gross acreage.
- ♦ All land proposed for private streets; and
- ♦ A lot of at least the size required by the applicable base zoning district, if an existing dwelling is to remain on the site.

#### **Calculating maximum number of residential units.**

To calculate the maximum number of residential units per net acre, divide the number of square feet in the net acres by the minimum number of square feet required for each lot in the applicable zoning district.

The net development area is determined by subtracting from the gross area, the land needed for public and private streets as well as areas for sensitive lands. The calculations are as follows:

Gross lot area	407,721 square feet
Public Street dedication	17,828 square feet
Private Street dedication	22,670 square feet
Drainageway	70,862 square feet
Steep Slopes	107,556 square feet
Wetlands (wholly contained in drainageway)	
<b>NET DEVELOPABLE AREA:</b>	<b>188,805 square feet</b>
(Before Density Transfer)	

NUMBER OF LOTS: 25 lots

#### **Residential Density Transfer**

Rules governing residential density transfer. The units per acre calculated by subtracting land areas listed in Section 18.715.020 A. 1a - c from the gross acres may be transferred to the remaining buildable land areas subject to the following limitations:

1. The number of units which can be transferred is limited to the number of units which would have been allowed on 25 percent of the unbuildable area if not for these regulations; and
2. The total number of units per site does not exceed 125 percent of the maximum number of units per gross acre permitted for the applicable comprehensive plan designation.

Based on the rules for density transfer, the applicant is able to utilize 25% of the constrained lands as part of the net developable area. In this case, the drainageway and steep slopes constitute a total of 178,418 square feet. Twenty-five percent of this area is 44,604 square feet, for a total net developable area of 233,409 square feet.

To calculate the maximum allowed density, net developable area is divided by the minimum allowed square footage within the zone, as follows:

R-4.5 zone  
 $233,409 \div 7,500 = 31$  dwelling units.

The total number of units based on 125% of the gross site acreage would be 25 lots x 125%, or 31 lots.

**FINDING:** The proposed 29 dwelling units do not exceed maximum density of the net developable area. This standard is met.

**Calculating minimum number of residential units.**

As required by Section 18.510.040, the minimum number of residential units per net acre shall be calculated by multiplying the maximum number of units determined in Subsection B above by 80% (0.8).

The minimum required density is determined by the following calculation:

$$25 \times 0.80 = 20$$

FINDING: The standard for minimum density is met.

**ENVIRONMENTAL PERFORMANCE STANDARDS: CHAPTER 18.725**

These standards require that federal and state environmental laws, rules and regulations be applied to development within the City of Tigard. Section 18.725.030 (Performance Standards) regulates: Noise, visible emissions, vibration and odors.

**Noise.** For the purposes of noise regulation, the provisions of Sections 7.41.130 through 7.40.210 of the Tigard Municipal Code shall apply.

**Visible Emissions.** Within the commercial zoning districts and the industrial park (IP) zoning district, there shall be no use, operation or activity which results in a stack or other point-source emission, other than an emission from space heating, or the emission of pure uncombined water (steam) which is visible from a property line. Department of Environmental Quality (DEQ) rules for visible emissions (340-21-015 and 340-28-070) apply.

**Vibration.** No vibration other than that caused by highway vehicles, trains and aircraft is permitted in any given zoning district which is discernible without instruments at the property line of the use concerned.

**Odors.** The emissions of odorous gases or other matter in such quantities as to be readily detectable at any point beyond the property line of the use creating the odors is prohibited. DEQ rules for odors (340-028-090) apply.

**Glare and heat.** No direct or sky reflected glare, whether from floodlights or from high temperature processes such as combustion or welding, which is visible at the lot line shall be permitted, and; 1) there shall be no emission or transmission of heat or heated air which is discernible at the lot line of the source; and 2) these regulations shall not apply to signs or floodlights in parking areas or construction equipment at the time of construction or excavation work otherwise permitted by this title.

**Insects and rodents.** All materials including wastes shall be stored and all grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.

This is a detached single-family project, which is permitted within planned developments in the R-4.5 zone. There is nothing to indicate that these standards will not be met. However, ongoing maintenance to meet these standards shall be maintained and any violation of these standards will be addressed by the City of Tigards' Code Enforcement Officer.

FINDING: The Environmental Performance standards are met.

**LANDSCAPING AND SCREENING: CHAPTER 18.745**

**Establishes standards for landscaping, buffering and screening to enhance the aesthetic environmental quality of the City.**

The R-4.5 zoning district does not require any landscaping, however, planned developments require that a minimum of 20% of the site be landscaped. As discussed previously, the common areas that are to be landscaped constitute 27% of the site, and additional landscaping will be planted with the development of each lot.



**Section 18.745.040.** states that all development projects fronting on a public street, private street, or a private driveway more than 100 feet in length after the adoption of this title shall be required to plant street trees in accordance with the standards in Section 18.745.040C.

The applicant has provided a street tree plan for the development to include the planting of 62 Red Sunset Maples along the front of the lots facing the public and private street and along the site frontage along SW 74<sup>th</sup> Avenue. The proposed street trees are acceptable species; however, staff recommends a greater variety of trees be used by utilizing an alternate species along either the public or private street. This will further distinguish the private from the public street as well. With the change outlined above, this criterion is satisfied.

**FINDING:** The proposed street tree plan should offer a greater diversity of tree species.

**CONDITION:** Submit a revised street tree/landscape plan that shows an alternative tree species used for either the public or private street to vary the streetscape.

**Buffering and Screening - Section 18.745.050**

**Buffering and screening is required to reduce the impacts on adjacent uses which are of a different type in accordance with the matrices in this chapter (Tables 18.745.1 and 18.745.2).**

The subject site is surrounded by single-family developments; therefore, there is no requirement for buffering and screening for this project.

**FINDING:** As conditioned, the proposed development will comply with all applicable Landscaping and Screening requirements of Chapter 18.745.

**MIXED SOLID WASTE AND RECYCLABLE STORAGE: CHAPTER 18.755**

Although listed as a review criterion for this application, this chapter is only applicable to multi-unit residential buildings containing five or more units and non-residential construction. Therefore, this chapter is inapplicable. The applicant has stated that they intend to serve the site as any other single-family development would be served, and Pride Disposal has signed off on the site plan for serviceability.

**OFF-STREET PARKING AND LOADING REQUIREMENTS: CHAPTER 18.765**

**This Chapter is applicable for development projects when there is new construction, expansion of existing use, or change of use in accordance with Section 18.765.070 Minimum and Maximum Off-Street Parking Requirements.**

The proposed project will create 29 lots for single-family dwellings. Submittals of detailed plans for the construction of homes within the development are not necessary at this time. Table 18.765.2 requires that one (1) off-street parking space be provided per detached dwelling unit. There is no maximum limit on parking allowed for detached single-family dwellings. There is also no bicycle parking requirement for single-family dwellings. Staff notes that there is a 20-foot required setback from the face of garages to property lines in all residential zones. To ensure that homes constructed in this development comply with these standards, the following condition shall apply:

**CONDITION:** At the time of submittal for building permits for individual homes within the development, the developer shall submit materials demonstrating that one (1) off-street parking space, which meets minimum dimensional requirements and setback requirements as specified in Title 18, will be provided on-site for each new home.

**SENSITIVE LANDS: CHAPTER 18.775**

The development site includes area of drainageways, associated wetlands, and steep slopes. Development of sites that include these areas requires review through the sensitive lands criteria as described below.

**Jurisdictional wetlands. Landform alterations or developments which are only within wetland areas that meet the jurisdictional requirements and permit criteria of the U.S. Army Corps of Engineers, Division of State Lands, CWS, and/or other federal, state, or regional agencies, and are not designated as significant wetlands on the City of Tigard Wetland and Streams Corridors Map., do not require a sensitive lands permit. The City shall require that all necessary permits from other agencies are obtained. All other applicable City requirements**



must be satisfied, including sensitive land permits for areas within the 100-year floodplain, slopes of 25% or greater or unstable ground, drainageways, and wetlands which are not under state or federal jurisdiction.

The wetlands within this site do not appear as significant wetlands on the City's map, but are regulated by CWS and state agencies. A condition of approval will be imposed requiring the necessary permits from Army Corps, Division of State Lands, and CWS be obtained.

**Steep slopes.** The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit on slopes of 25% or greater or unstable ground based upon findings that all of the following criteria have been satisfied:

1. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;
2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;
3. The structures are appropriately sited and designed to ensure structural stability and proper drainage of foundation and crawl space areas for development with any of the following soil conditions: wet/high water table; high shrink-swell capability; compressible/organic; and shallow depth-to-bedrock; and
4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening.

The proposed land form alteration is limited to the extent necessary to provide for a street, sidewalk, and utilities. The applicant has attempted to limit the land alteration by narrowing the street, eliminating the sidewalk on one side of the private street, and reducing front yard setbacks. The predominance of the landform alteration will occur outside the stream corridor and drainageway. Also, a geotechnical report has been performed. An erosion control and grading plan will be required as part of the engineering approval process to insure that grading within the steep slope areas will not result in sedimentation or erosion, as well as avoid on or off-site adverse effects. Furthermore, the City will require the applicant's engineer to submit the proposed construction plans to the geotechnical engineer for review and approval prior to City approval of the construction plans. A geotechnical report has been conducted to evaluate the suitability of the lots for building placement. The geotech report provides a designated area where no further geotechnical evaluation is necessary, and areas where a more detailed analysis will be required. This designation affects a portion of the private street and lots 13, 14, 15, 22, and 23. A condition is required further in this report to have the geotechnical engineer review the proposed grading and building placements prior to final plat approval for these areas. To address erosion concerns and removal of vegetation, the applicant will be required to submit an erosion control plan prior to any grading. The applicant has not indicated that areas affected by landform alterations will be re-planted if not covered by structures or impervious surfaces, however, this will be insured by the erosion control plan and a condition requiring areas to be re-planted prior to final building permits will be required as part of this approval, and is furthermore required through the CWS service provider letter.

**Within drainageways.** The appropriate approval authority shall approve, approve with conditions or deny an application request for a sensitive lands permit within drainageways based upon findings that all of the following criteria have been satisfied:

1. The extent and nature of the proposed land form alteration or development will not create site disturbances to an extent greater than that required for the use;

In this case, the landform alteration will include a stream crossing to extend SW 74<sup>th</sup> Avenue. This is a requirement of the City to improve the site frontage, provide access to the two proposed lots, and further implement the objectives of the City's Transportation System Plan which designates SW 74<sup>th</sup> as a neighborhood route. The applicant has proposed a small retaining wall to minimize the amount of fill in the stream corridor. The extent of the disturbance is no greater than that required for the roadway. No disturbance within the drainageway is proposed to accommodate the lots or internal streets.

2. The proposed land form alteration or development will not result in erosion, stream sedimentation, ground instability, or other adverse on-site and off-site effects or hazards to life or property;

As described previously, an erosion control and grading plan will be required as part of the engineering approval process to insure that grading within the steep slope areas will not result in sedimentation or erosion, as well as avoid on or off-site adverse effects. Furthermore, the City will require the applicant's engineer to submit the proposed construction plans to the geotechnical engineer for review and approval prior to City approval of the construction plans.

**3. The water flow capacity of the drainageway is not decreased;**

The applicant has submitted a stormwater report that shows that the capacity of the drainageway is not affected. The applicant has proposed using an oversized box culvert to ensure that upstream properties are not affected.

**4. Where natural vegetation has been removed due to land form alteration or development, the areas not covered by structures or impervious surfaces will be replanted to prevent erosion in accordance with Chapter 18.745, Landscaping and Screening;**

To address erosion concerns and removal of vegetation, the applicant will be required to submit an erosion control plan prior to any grading. The applicant has not indicated that areas affected by landform alterations will be re-planted if not covered by structures or impervious surfaces, however, this will be insured by the erosion control plan and a condition requiring areas to be re-planted prior to final building permits will be required as part of this approval, and is furthermore required through the CWS service provider letter.

**5. The drainageway will be replaced by a public facility of adequate size to accommodate maximum flow in accordance with the adopted 1981 Master Drainage Plan;**

The 1981 Master Drainage Plan does not identify any public facilities for this portion of Ash Creek.

**6. The necessary U.S. Army Corps of Engineers and State of Oregon Land Board, Division of State Lands, and CWS approvals shall be obtained;**

The applicant has shown approvals from Clean Water Services, but has not yet obtained U.S. Army Corps of Engineers, and Division of State Lands approvals. These will be required prior to commencing any site work.

**7. Where land form alterations and/or development are allowed within and adjacent to the 100-year floodplain, the City shall require the consideration of dedication of sufficient open land area within and adjacent to the floodplain in accordance with the Comprehensive Plan. This area shall include portions of a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the adopted pedestrian bicycle pathway plan.**

There is no 100-year floodplain within or adjacent to the proposed development. This standard is inapplicable.

**FINDING:** Provided the applicant complies with the following conditions, the proposal can meet the criteria necessary to issue a sensitive lands permit on this particular site.

**CONDITIONS:**

- Prior to the issuance of final occupancy on any building, the applicant must provide City staff with a letter from Clean Water Services that indicates compliance with the approved service provider letter (#2819).
- Prior to any site work, the applicant shall provide evidence of all necessary approvals from US Army Corps of Engineers and the Division of State Lands.
- Prior to any site work, the drainage tract must be clearly identified in the field with permanent (preferably with minimum 4-foot-tall black chainlink) fencing so as to insure no grading or material is placed in this area. Any fencing that is damaged during construction must be replaced prior to final building inspection.

- Prior to final plat approval submit and receive approval for an erosion control and grading plan for alteration on slopes exceeding 25%.
- Re-plant any area where vegetation has been removed as a result of grading in conformance with the Clean Water Services Standards as set forth in the site assessment file #2819, prior to obtaining building permits.
- Prior to commencing on site improvements, the applicant shall have the geotech engineer review and approve the construction plans for the City's review and approval.

#### **TREE REMOVAL: CHAPTER 18.790**

**A tree plan for the planting, removal and protection of trees prepared by a certified arborist shall be provided with a site development review application. The tree plan shall include identification of all existing trees, identification of a program to save existing trees or mitigate tree removal over 12 inches in caliper, which trees are to be removed, protection program defining standards and methods that will be used by the applicant to protect trees during and after construction.**

The applicant indicates in his narrative that the property is subject to a timber deferral status and the owner has elected to remove all of the trees on the property that are outside the sensitive lands areas as provided for in the Development Code, Section 18.790.050 (D)(4). There are several trees that are indicated for removal within the sensitive lands areas, and these trees will require separate tree removal permits. Staff estimates that there are 74 such trees. The applicant should note that a separate fee is required for each tree removal in a sensitive land area and based on the estimate and current permit fees, this equates to \$4,200. The applicant will need to demonstrate compliance with the removal criteria in Section 18.790.050(A).

The applicant has not submitted an arborist report regarding the protection of the trees that will remain on site.

**FINDING** The applicant has provided a tree removal plan indicating the trees proposed for removal. There are approximately 74 trees in sensitive land areas that will require tree removal permits. No arborist report to address the protection of the remaining trees on site has been submitted. To ensure that the trees are preserved according to the tree removal plan, the following conditions shall apply:

#### **CONDITIONS:**

- The applicant shall submit an arborist report with tree protection recommendations, and shall provide the City Arborist with a construction sequence including installation and removal of tree protection devices, clearing, grading, and paving.
- Prior to site work, the applicant shall submit a complete set of construction documents with the tree locations for the City Arborists review.
- The applicant shall notify the City Arborist when tree protection measures are in place so that he may verify that the measures will function properly prior to construction.

#### **Visual Clearance Areas: Section 18.795**

**Clear vision area shall be maintained on the corners of all property adjacent to intersection of two streets, a street and a railroad, or a driveway providing access to a public or private street. A clear vision area shall contain no vehicle, hedge, planting, fence, wall structure, or temporary or permanent obstruction exceeding three (3) feet in height, measured from the top of the curb, or where no curb exists, from the street center grade, except the trees exceeding this height may be located in this area, provided all branches below eight feet are removed. For arterial streets the visual clearance shall not be less than 35 feet on each side of the intersection.**

No specific plans for the construction of structures are required through the subdivision process. Compliance with vision clearance requirements shall be confirmed through the building permit process for all homes to be constructed within the development. The applicant has illustrated the clear vision areas on the plans and included details at a larger scale for the intersection of the private street at the new public street, and at the new public street and SW 74<sup>th</sup> Avenue, and has indicated in the narrative that there will be no obstructions placed within these areas. This standard is met.

**G. IMPACT STUDY: SECTION 18.390.040.B.e**

Requires that the applicant shall include an impact study. The study shall address, at a minimum, the transportation system, including bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact of the development on the public at large, public facilities systems, and affected private property users. In situations where the Community Development Code requires the dedication of real property interests, the applicant shall either specifically concur with the dedication of real property interest, or provide evidence which supports the conclusion that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

The applicant has submitted an impact study addressing the required elements above.

**ROUGH PROPORTIONALITY ANALYSIS**

Any required street improvements to certain collector or higher volume streets and the Washington County Traffic Impact Fee (TIF) are mitigation measures that are required at the time of development. Based on a transportation impact study prepared by Mr. David Larson for the A-Boy Expansion/Dolan II/Resolution 95-61, TIF's are expected to recapture 32 percent of the traffic impact of new development on the Collector and Arterial Street system. Effective July 1, 2003, the TIF for a detached, single-family dwelling is \$2,530. Upon completion of this development, the future builders of the residences will be required to pay TIF's totaling approximately \$73,370 (\$2,530 x 29 dwelling units). Based on the estimate that total TIF fees cover 32 percent of the impact on major street improvements citywide, a fee that would cover 100 percent of this projects traffic impact is \$229,281 (\$73,370 divided by .32). The difference between the TIF paid and the full impact, is considered as unmitigated impact.

The internal streets within the subdivision are needed to allow the subdivision to develop and the need for these streets is created by the subdivision. Because the need for the internal streets is created by the development, the impact of the development is directly proportional to the cost of dedication and construction of the internal streets and not considered as mitigation for the development impact.

With regard to off site mitigation measures, the applicant is proposing to make ¾ -street improvements and provide a crossing over Ash Creek. The applicant's estimated cost of these street improvements along SW 74<sup>th</sup> Avenue is \$250,000. Using the City's standard methodology, the amount of mitigation provided through the applicant's street improvements exceeds the estimated value of the full impact from this development by approximately \$94,000. This is not roughly proportionate to the impact of the development; however, it is required for the proper function of the applicant's subdivision, to provide access to the lots within the subdivision, and the applicant has proposed this improvement.

With regard to the dedication of real property interests, the applicant will be required to dedicate an additional 2 feet of right of way totaling 842 square feet for a total value of approximately \$2,526. This amount of real property dedication is roughly proportionate to the full \$229,281 impact. Although the cost of the physical improvements exceed the full impact, the applicant has proposed these improvements and is required to provide them in order to satisfy the standards of the street improvement chapter.

Full Impact .....	(73,370÷0.32)	\$229,281
Less TIF Assessment.....	(29 lots x \$2,530)	-\$73,370
Less mitigated costs 74 <sup>th</sup> Street Improvement.....		-\$250,000
Estimate of Unmitigated Impacts		-\$155,911

**FINDING:** The applicant's proposed street improvements are required to address the standards of Chapter 18.810 and to allow the subdivision to function properly. While the cost of these improvements is not proportionate to the level of impact, the improvements have been proposed by the applicant. The required dedication of right of way is clearly proportionate to the impact of the creation of these 29 lots. Therefore, the conditions are either roughly proportionate to the impacts sustained or required to meet the code standards and are thereby justified.

#### **STREET AND UTILITY IMPROVEMENTS STANDARDS: CHAPTER 18.810**

**Chapter 18.810 provides construction standards for the implementation of public and private facilities and utilities such as streets, sewers, and drainage. The applicable standards are addressed below:**

##### **Streets:**

##### **Improvements:**

**Section 18.810.030.A.1 states that streets within a development and streets adjacent shall be improved in accordance with the TDC standards.**

**Section 18.810.030.A.2 states that any new street or additional street width planned as a portion of an existing street shall be dedicated and improved in accordance with the TDC.**

**Minimum Rights-of-Way and Street Widths: Section 18.810.030(E) requires a neighborhood route street to have a 54-foot right-of-way width and a 32-foot paved section. Other improvements required may include on-street parking, sidewalks and bikeways, underground utilities, street lighting, storm drainage, and street trees.**

##### **SW 74<sup>th</sup> Avenue**

This site lies adjacent to SW 74<sup>th</sup> Avenue, which is classified as a Neighborhood Route on the City of Tigard Transportation Plan Map. At present, there is approximately 25 feet of ROW from centerline, according to the most recent tax assessor's map. The applicant is proposing to dedicate additional ROW to provide 27 feet from centerline.

SW 74<sup>th</sup> Avenue is currently unimproved. There is an existing drainage way that crosses 74<sup>th</sup> Avenue just south of the proposed intersection. There is also a 36-inch water transmission line, owned and operated by the City of Tualatin. The applicant's engineer found that if he designed the roadway to meet Tigard's standard for a sag vertical curve it would require significant fill to be placed over the water line. The City of Tualatin was not in favor of this amount of fill. Another issue is the fact that the more fill that is placed in the sag curve the more impact the fill has on the drainage way wetland area. The applicant and his engineer met with representatives from Tigard, Tualatin and Tualatin Valley Water District to discuss this issue. All parties agreed that the applicant should be permitted to construct 74<sup>th</sup> Avenue with a steeper grade than the standard in order to minimize the impact on the water line and the wetlands. The applicant would be required to apply for an adjustment to the grade standard. This discussion will be covered later in this report. The result of the applicant's design proposal is that they will be constructing a 3/4-street improvement along the frontage of their site.

##### **Adjustment for Curb-tight Sidewalk:**

Because of the stream corridor and associated wetlands that traverse the proposed street crossing of SW 74<sup>th</sup> Avenue, the applicant would like to move the sidewalk to curb-tight to reduce the width of the street and the resulting amount of fill required to build the street. By placing the sidewalk curb tight, 5 fewer feet of width into the stream corridor is avoided. Adjustments to street standards are covered under TDC 18.370.020.C.11, where the Director must find that the following criterion is satisfied:

*"Strict application of the standards will result in an unacceptably adverse impact on existing development, on the proposed development, or on natural features such as wetlands, steep slopes or existing mature trees. In approving an adjustment to the standards, the Director shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards."*

The drainageway and wetlands in Tract A adjacent to the roadway cannot be avoided while still providing for the street connection. The applicant has reduced the street section to the minimum width of 24 feet and has proposed a retaining wall to limit the amount of fill and protect the roadbed from undermining and erosion. By moving the sidewalk to the curb line, the required planting strip is eliminated; however, additional preservation of wetlands, the stream corridor, and existing mature trees will result. Staff finds that the adjustment would not adversely affect the public benefits, as citizens often comment that they do not like to see mature trees being removed with development. The applicant has proposed planting street trees on the outside of the sidewalk to maintain the street tree planting scheme. Staff recommends approval of this adjustment.

**Future Street Plan and Extension of Streets:** Section 18.810.030(F) states that a future street plan shall be filed which shows the pattern of existing and proposed future streets from the boundaries of the proposed land division. This section also states that where it is necessary to give access or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary lines of the tract to be developed and a barricade shall be constructed at the end of the street. These street stubs to adjoining properties are not considered to be cul-de-sacs since they are intended to continue as through streets at such time as the adjoining property is developed. A barricade shall be constructed at the end of the street by the property owners which shall not be removed until authorized by the City Engineer, the cost of which shall be included in the street construction cost. Temporary hammerhead turnouts or temporary cul-de-sac bulbs shall be constructed for stub streets in excess of 150 feet in length.

The applicant's plan shows that they will stub a public street to the parcel to the north. The location of this street stub will accommodate effective development of this parcel. Staff concurs with the proposed plan.

**Street Alignment and Connections:** Section 18.810.030(G) states that staggering of streets making "T" intersections at collectors and arterials shall not be designed so that jogs of less than 300 feet on such streets are created, as measured from the centerline of such street. Spacing between local street intersections shall have a minimum separation of 125 feet. All local streets which abut a development site shall be extended within the site to provide through circulation when not precluded by environmental or topographical constraints, existing development patterns or strict adherence to other standards in this code. A street connection or extension is precluded when it is not possible to redesign, or reconfigure the street pattern to provide required extensions. In the case of environmental or topographical constraints, the mere presence of a constraint is not sufficient to show that a street connection is not possible. The applicant must show why the constraint precludes some reasonable street connection.

As was stated above, the steep slopes and creek to the south preclude extension of a public or private roadway further to the west. No public street connection is proposed to the east due to the fact that all parcels around that part of the site are fully developed with no street extensions available to this site.

**Cul-de-sacs:** 18.810.030.K states that a cul-de-sac shall be no more than 200 feet long, shall not provide access to greater than 20 dwelling units, and shall only be used when environmental or topographical constraints, existing development pattern, or strict adherence to other standards in this code preclude street extension and through circulation:

- ♦ All cul-de-sacs shall terminate with a turnaround. Use of turnaround configurations other than circular, shall be approved by the City Engineer; and
- ♦ The length of the cul-de-sac shall be measured along the centerline of the roadway from the near side of the intersecting street to the farthest point of the cul-de-sac.
- ♦ If a cul-de-sac is more than 300 feet long, a lighted direct pathway to an adjacent street may be required to be provided and dedicated to the City.

The applicant is proposing a private street cul-de-sac that will be approximately 600 feet long. The applicant has asked for an adjustment to the standard. Adjustments to provisions under 18.810 are covered under 18.370.020.C.11, which states:



*"The director shall approve, approve with conditions, or deny a request for an adjustment to the street improvement requirements, based on findings that the adverse impact on existing development, on the proposed development, or on natural features such as wetlands, steep slopes or existing mature trees. In approving an adjustment to the standards, the Director shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards".*

The applicant states that no practical alternatives are available to provide reasonable and efficient access to the entire property.

The applicant proposes a private street that would have a length of approximately 500 feet. Again, the adjustment criteria found in TDC 18.370.020.C.11 applies:

*"Strict application of the standards will result in an unacceptably adverse impact on existing development, on the proposed development, or on natural features such as wetlands, steep slopes or existing mature trees. In approving an adjustment to the standards, the Director shall determine that the potential adverse impacts exceed the public benefits of strict application of the standards."*

The site is over 967 feet deep, which poses a challenge immediately when it comes to serving developable lots with street frontage. In addition, as was mentioned before, the steep slopes and creek to the south preclude any connection to the south. Existing development to the north and east also preclude street connections. Therefore, in order to serve the developable portion of this site, a street of over 200 feet is necessary. The impacts to the steep slopes and creek channel would exceed any perceived public benefit of a through street, especially when this street will only serve a total of 29 homes. Staff supports this adjustment.

**Grades and Curves:** Section 18.810.030.M states that grades shall not exceed ten percent on arterials, 12% on collector streets, or 12% on any other street (except that local or residential access streets may have segments with grades up to 15% for distances of no greater than 250 feet), and:

The applicant has applied for an adjustment to this standard, but review of their submittal shows that the proposed street grade does not exceed 15% for over 250 feet. Therefore, an adjustment is not required.

**Private Streets:** Section 18.810.030.S states that design standards for private streets shall be established by the City Engineer. The City shall require legal assurances for the continued maintenance of private streets, such as a recorded maintenance agreement. Private streets serving more than six dwelling units are permitted only within planned developments, mobile home parks, and multi-family residential developments.

The applicant is proposing to serve lots 2-23 with a private street. Because this development is proposed as a planned development a private street is acceptable.

The applicant shall place a statement on the face of the final plat indicating the private street(s) will be owned and maintained by the properties that will be served by it/them. In addition, the applicant shall record Conditions, Covenants and Restrictions (CC&R's) along with the final plat that will clarify how the private property owners are to maintain the private street(s). These CC&R's shall be reviewed and approved by the City prior to approval of the final plat. The City's public improvement design standards require private streets to have a pavement section equal to a public local street. The applicant will need to provide this type of pavement section.

**Block Designs -** Section 18.810.040.A states that the length, width and shape of blocks shall be designed with due regard to providing adequate building sites for the use contemplated, consideration of needs for convenient access, circulation, control and safety of street traffic and recognition of limitations and opportunities of topography.

**Block Sizes:** Section 18.810.040.B.1 states that the perimeter of blocks formed by streets shall not exceed 1,800 feet measured along the right-of-way line except:

- Where street location is precluded by natural topography, wetlands or other bodies of water or, pre-existing development or;

- ♦ For blocks adjacent to arterial streets, limited access highways, major collectors or railroads.
- ♦ For non-residential blocks in which internal public circulation provides equivalent access.

Because of pre-existing adjacent development and the stream corridor, there are no further opportunities for connections. The applicant's proposed street stub to the north will eventually provide a block measuring approximately 1,250 feet. This standard is met.

**Section 18.810.040.B.2** also states that bicycle and pedestrian connections on public easements or right-of-ways shall be provided when full street connection is not possible. Spacing between connections shall be no more than 330 feet, except where precluded by environmental or topographical constraints, existing development patterns, or strict adherence to other standards in the code.

The applicant has proposed to serve the site with a sidewalk on one side of the private street, and to stub a pedestrian connection with the street stub to the north. There are no opportunities for a pedestrian connection to the east or south due to pre existing development patterns. This standard is satisfied.

**Lots - Size and Shape:** Section 18.810.060(A) prohibits lot depth from being more than 2.5 times the average lot width, unless the parcel is less than 1.5 times the minimum lot size of the applicable zoning district.

Only one lot exceeds 1.5 times the minimum lot size, however this lot (#13) is 69 feet in average width which is less than 2.5 times the lot depth of 170 feet. This standard is satisfied.

**Lot Frontage:** Section 18.810.060(B) requires that lots have at least 25 feet of frontage on public or private streets, other than an alley. In the case of a land partition, 18.420.050.A.4.c applies, which requires a parcel to either have a minimum 15-foot frontage or a minimum 15-foot wide recorded access easement. In cases where the lot is for an attached single-family dwelling unit, the frontage shall be at least 15 feet.

There are several lots around the cul-de-sac that have less than 25 feet of frontage. This will need to be revised on the final plat so that all lots meet the minimum 25-foot standard. All other lots with the exception of lot 29 have 25 feet of frontage onto a public or private street. This is not a standard that can be deviated from through the planned development process. This criterion is not satisfied.

**FINDING:** Lots 9, 11, 12, and 29 do not have 25 feet of frontage on a public or private street.

**CONDITION:** Prior to approval of the final plat, the applicant shall revise the plat to accommodate a minimum of 25 feet of frontage for all lots within the development.

**Sidewalks:** Section 18.810.070.A requires that sidewalks be constructed to meet City design standards and be located on both sides of arterial, collector and local residential streets.

The applicant is proposing to construct sidewalks with their street improvements. This meets the standard.

#### **Sanitary Sewers:**

**Sewers Required:** Section 18.810.090.A requires that sanitary sewer be installed to serve each new development and to connect developments to existing mains in accordance with the provisions set forth in Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 1996 and including any future revisions or amendments) and the adopted policies of the comprehensive plan.

**Over-sizing:** Section 18.810.090.C states that proposed sewer systems shall include consideration of additional development within the area as projected by the Comprehensive Plan.



There is an existing sewer manhole in 74<sup>th</sup> Avenue. The applicant is proposing to extend the 8 inch line north in 74<sup>th</sup> Avenue and then east in the new public and private streets to serve all lots. They are stubbing a line to the north for extension with future street improvements.

**Storm Drainage:**

**General Provisions:** Section 18.810.100.A states requires developers to make adequate provisions for storm water and flood water runoff.

**Accommodation of Upstream Drainage:** Section 18.810.100.C states that a culvert or other drainage facility shall be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the development. The City Engineer shall approve the necessary size of the facility, based on the provisions of Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 2000 and including any future revisions or amendments).

There is a creek on the south portion of the property. The applicant is protecting that creek by setting the development away from the sensitive area boundary in accordance with CWS standards. The drainage way will have no impact on the proposed new lots.

**Effect on Downstream Drainage:** Section 18.810.100.D states that where it is anticipated by the City Engineer that the additional runoff resulting from the development will overload an existing drainage facility, the Director and Engineer shall withhold approval of the development until provisions have been made for improvement of the potential condition or until provisions have been made for storage of additional runoff caused by the development in accordance with the Design and Construction Standards for Sanitary and Surface Water Management (as adopted by Clean Water Services in 2000 and including any future revisions or amendments).

In 1997, Clean Water Services (CWS) completed a basin study of Fanno Creek and adopted the Fanno Creek Watershed Management Plan. Section V of that plan includes a recommendation that local governments institute a stormwater detention/effective impervious area reduction program resulting in no net increase in storm peak flows up to the 25-year event. The City will require that all new developments resulting in an increase of impervious surfaces provide onsite detention facilities, unless the development is located adjacent to Fanno Creek. For those developments adjacent to Fanno Creek, the storm water runoff will be permitted to discharge without detention.

The site slopes to the south towards Ash Creek. The applicant has shown a new public storm system located within the proposed public and private streets. They have also shown that a stub for future connection will be provided to the north, serving the future north-south street. The storm system will outlet to a pond that will provide both water quantity and quality measures, in accordance with CWS standards, prior to discharging to Ash Creek. The applicant will need to provide access to the pond for maintenance.

The applicant is also proposing to construct a 5-foot by 10-foot box culvert under 74<sup>th</sup> Avenue to accommodate the crossing of Ash Creek.

**Bikeways and Pedestrian Pathways:**

**Bikeway Extension:** Section 18.810.110.A states that developments adjoining proposed bikeways identified on the City's adopted pedestrian/bikeway plan shall include provisions for the future extension of such bikeways through the dedication of easements or right-of-way.

74<sup>th</sup> Avenue is not classified as a bike facility.

**Cost of Construction:** Section 18.810.110.B states that development permits issued for planned unit developments, conditional use permits, subdivisions, and other developments which will principally benefit from such bikeways shall be conditioned to include the cost or construction of bikeway improvements.

This standard is not applicable.

**Minimum Width:** Section 18.810.110.C states that the minimum width for bikeways within the roadway is five feet per bicycle travel lane. Minimum width for two-way bikeways separated from the road is eight feet.

This standard is not applicable.

**Utilities:**

Section 18.810.120 states that all utility lines, but not limited to those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface mounted transformers, surface mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric lines operating at 50,000 volts or above, and:

- ♦ The developer shall make all necessary arrangements with the serving utility to provide the underground services;
- ♦ The City reserves the right to approve location of all surface mounted facilities;
- ♦ All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets; and
- ♦ Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.

**Exception to Under-Grounding Requirement:** Section 18.810.120.C states that a developer shall pay a fee in-lieu of under-grounding costs when the development is proposed to take place on a street where existing utilities which are not underground will serve the development and the approval authority determines that the cost and technical difficulty of under-grounding the utilities outweighs the benefit of under-grounding in conjunction with the development. The determination shall be on a case-by-case basis. The most common, but not the only, such situation is a short frontage development for which under-grounding would result in the placement of additional poles, rather than the removal of above-ground utilities facilities. An applicant for a development which is served by utilities which are not underground and which are located across a public right-of-way from the applicant's property shall pay a fee in-lieu of under-grounding.

There are existing overhead utility lines along the frontage of SW 74<sup>th</sup> Avenue. If the fee in-lieu is proposed, it is equal to \$27.50 per lineal foot of street frontage that contains the overhead lines. The frontage along this site is 421 lineal feet; therefore the fee would be \$ 11,578.

**ADDITIONAL CITY AND/OR AGENCY CONCERNS WITH STREET AND UTILITY IMPROVEMENT STANDARDS:**

**Traffic Study Findings:**

A Traffic Impact Report was submitted by CTS Engineers, Inc., dated April 30, 2003. CTS analyzed the intersections at 74<sup>th</sup> Avenue and Cedarcrest Street and 74<sup>th</sup> Avenue and Taylors Ferry Road. CTS found that under existing conditions these intersections operate at Level of Service (LOS) B or better. When this project is developed it will generate approximately 278 vehicle trips during an average week day, with 29 trips occurring during the PM peak hours and 22 trips occurring during the AM peak hours. CTS found that with the build out of this site and 2005 traffic conditions that these intersections will continue to operate at LOS B or better.

CTS found that the vehicle trips will slightly increase traffic volumes on surrounding streets, but will have little impact on traffic operations along 74<sup>th</sup> Avenue, including the study intersections.

Based on the findings of the traffic impact report, staff finds that this project will not have a negative impact on the transportation system.

**Public Water System:**

There is an existing TVWD water main in 74<sup>th</sup> Avenue. The applicant will extend a public water main within the proposed streets. The applicant will need to obtain a permit from TVWD prior to construction.

### **Storm Water Quality:**

*The City has agreed to enforce Surface Water Management (SWM) regulations established by Clean Water Services (CWS) Design and Construction Standards (adopted by Resolution and Order No. 00-7) which require the construction of on-site water quality facilities. The facilities shall be designed to remove 65 percent of the phosphorus contained in 100 percent of the storm water runoff generated from newly created impervious surfaces. In addition, a maintenance plan shall be submitted indicating the frequency and method to be used in keeping the facility maintained through the year.*

Prior to construction, the applicant shall submit plans and calculations for a water quality facility that will meet the intent of the CWS Design Standards. In addition, the applicant shall submit a maintenance plan for the facility that must be reviewed and approved by the City prior to construction.

The applicant is proposing to provide a pond that will provide both water quantity and quality for this project. The applicant has indicated that the pond has been designed per CWS standards.

Prior to the City accepting this facility as a public facility, the developer shall maintain it for a minimum of three years after construction is completed. The pond shall be placed in a tract and conveyed to the City on the final plat. The developer will be required to submit annual reports to the City which show what maintenance operations were conducted on the facility for that year. Once the three-year maintenance period is completed, the City will inspect the facility and make note of any problems that have arisen and require them to be resolved before the City will take over maintenance of the facility. In addition, the City will not take over maintenance of the facility unless 80 percent of the landscaping is established and healthy. If at any time during the maintenance period, the landscaping falls below the 80 percent level, the developer shall immediately reinstall all deficient planting at the next appropriate planting opportunity.

### **Grading and Erosion Control:**

**CWS Design and Construction Standards also regulate erosion control to reduce the amount of sediment and other pollutants reaching the public storm and surface water system resulting from development, construction, grading, excavating, clearing, and any other activity which accelerates erosion. Per CWS regulations, the applicant is required to submit an erosion control plan for City review and approval prior to issuance of City permits.**

*The Federal Clean Water Act requires that a National Pollutant Discharge Elimination System (NPDES) erosion control permit be issued for any development that will disturb one or more acre of land. Since this site is over five acres, the developer will be required to obtain an NPDES permit from the City prior to construction. This permit will be issued along with the site and/or building permit.*

A final grading plan shall be submitted showing the existing and proposed contours. The plan shall detail the provisions for surface drainage of all lots, and show that they will be graded to insure that surface drainage is directed to the street or a public storm drainage system approved by the Engineering Department. For situations where the back portions of lots drain away from a street and toward adjacent lots, appropriate private storm drainage lines shall be provided to sufficiently contain and convey runoff from each lot.

A geotechnical report was submitted by GeoPacific Engineering, Inc., dated May 9, 2003. The geotechnical engineer indicates that the proposed development is likely geotechnically feasible provided the geotechnical recommendations in his report are incorporated into the design and construction phases of the project. The recommendations of the report will need to be incorporated into the final grading plan and a final construction supervision report must be filed with the Engineering Department prior to issuance of building permits.

The design engineer shall also indicate, on the grading plan, which lots will have natural slopes between 10% and 20%, as well as lots that will have natural slopes in excess of 20%. This information will be necessary in determining if special grading inspections and/or permits will be necessary when the lots develop.

Since the site is over 1 acre in size an NPDES permit will be required.

### **Address Assignments:**

The City of Tigard is responsible for assigning addresses for parcels within the City of Tigard and within the Urban Service Boundary (USB). An addressing fee in the amount of \$30.00 per address shall be assessed. This fee shall be paid to the City prior to approval of the final plat.

For this project, the addressing fee will be \$900.00 (30 lots and/or tracts X \$30/address = \$900.00).

The developer will also be required to provide signage at the entrance of each shared flag lot driveway or private street that lists the addresses that are served by the given driveway or street. This will assist emergency services personnel to more easily find a particular home.

### **Survey Requirements**

The applicant's final plat shall contain State Plane Coordinates [NAD 83 (91)] on two monuments with a tie to the City's global positioning system (GPS) geodetic control network (GC 22). These monuments shall be on the same line and shall be of the same precision as required for the subdivision plat boundary. Along with the coordinates, the plat shall contain the scale factor to convert ground measurements to grid measurements and the angle from north to grid north. These coordinates can be established by:

- ♦ GPS tie networked to the City's GPS survey.
- ♦ By random traverse using conventional surveying methods.

In addition, the applicant's as-built drawings shall be tied to the GPS network. The applicant's engineer shall provide the City with an electronic file with points for each structure (manholes, catch basins, water valves, hydrants and other water system features) in the development, and their respective X and Y State Plane Coordinates, referenced to NAD 83 (91).

## **SECTION VII. OTHER STAFF COMMENTS**

**The Tigard Building Division** has reviewed this proposal but did not provide any additional comments.

**The City of Tigard Arborist** has reviewed the proposal, and notes that tree protection fencing will be required for the trees to remain.

**The City of Tigard Long Range Planning Division** has reviewed this proposal but did not provide any additional comments.

**The City of Tigard Crime Prevention Officer** has reviewed the proposal and recommended that a monument be placed at the start of the private street identifying house addresses to reduce delays in delivery of emergency services.

RESPONSE: The private street will be named separately from the public street. Houses will be addressed off that private street and, therefore, separate addressing identification (as is typical for flag lots) is not required. The developer may choose to install such signage, however, staff believes that with the separate street name, this signage is unnecessary.

## **SECTION VIII. AGENCY COMMENTS**

**The Tualatin Valley Fire and Rescue** has reviewed the proposal and offered the following comments:

- 1) **FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (15 feet for one or two dwelling units and out buildings), and an unobstructed vertical clearance of not less than 13 feet 6 inches. (UFC Sec. 902.2.2.1) Where fire apparatus roadways are less than 28 feet wide, "NO PARKING" signs shall be installed on both sides of the roadway and in turnarounds as needed. Where fire apparatus roadways are more than 28 feet wide but less than 32 feet wide, "NO PARKING" signs shall be installed on one side of the roadway and in turnarounds as needed. Where fire apparatus roadways are 32 feet wide or more, parking is not restricted. (UFC Sec. 902.2.4)

**The private street shall conform to Fire District standards.**

- 2) **NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. (UFC Sec. 902.2.4) Signs shall conform to the City of Tigard engineering standards.
- 3) **TURNING RADIUS:** The inside turning radius and outside turning radius shall be not less than 25 feet and 45 feet respectively, measured from the same center point. (UFC Sec. 902.2.2.3)
- 4) **GRADE:** Private fire apparatus access roadway grades shall not exceed an average grade of 10 percent with a maximum grade of 15 percent for lengths of no more than 200 feet. Intersections and turnarounds shall be level (maximum 5%) with the exception of crowning for water run-off. Public streets shall have a maximum grade of 15%. (UFC Sec. 902.2.2.6)
- 5) **SINGLE FAMILY DWELLINGS AND DUPLEXES - FIRE HYDRANTS:** Fire hydrants for single family dwellings, duplexes and sub-divisions, shall be placed at each intersection. Intermediate fire hydrants are required if any portion of a structure exceeds 500 feet from a hydrant at an intersection as measured in an approved manner around the outside of the structure and along approved fire apparatus access roadways. Placement of additional fire hydrants shall be as approved by the Chief. (UFC Sec. 903.4.2.2)
- 6) **FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD:** Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway. (UFC Sec. 903.4.2.4)
- 7) **REFLECTIVE HYDRANT MARKERS:** Fire hydrant locations shall be identified by the installation of reflective markers. The markers shall be blue. They shall be located adjacent and to the side of the centerline of the access road way that the fire hydrant is located on. In case that there is no center line, then assume a centerline, and place the reflectors accordingly. (UFC Sec. 901.4.3)
- 8) **SINGLE FAMILY DWELLINGS - REQUIRED FIRE FLOW:** The minimum available fire flow for single family dwellings and duplexes shall be 1,000 gallons per minute. If the structure(s) is(are) 3,600 square feet or larger, the required fire flow shall be determined according to UFC Appendix Table A-III-A-1. (UFC Appendix III-A, Sec. 5)
- 9) **ACCESS AND FIRE FIGHTING WATER SUPPLY DURING CONSTRUCTION:** Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any other construction on the site or subdivision. (UFC Sec. 8704)

**Tualatin Valley Water District** has reviewed the proposal and had no objections to it.

**Clean Water Services** has reviewed the proposal and offered the following comments:

- ♦ Roof drains from all new homes shall be collected in a public storm system and conveyed to a water quality facility for treatment in accordance with R.O. 03-11.
- ♦ Proposed modifications to flood plain elevations may have impact on development.
- ♦ Design must include requirements of Service Provider Letter #2819, issued May 13, 2003.

**The City of Tualatin** has reviewed the proposal and offered the following comments:

The City of Tualatin owns a water main in SW 74<sup>th</sup> Avenue. The proposed grade of the street means that our line will have between 15 and 18 feet of cover. The City would like to request that before construction plans are approved, the developer be required to pot-hole the line to determine the exact location and condition of the pipe. Additionally, the City should be informed 48 hours prior to construction so that a representative from the City can be present when they are impacting our pipe.

**RESPONSE:** This will be required as a condition of approval.

**Washington County, Portland General Electric, Tigard Tualatin School District, NW Natural Gas, Verizon, Comcast Cable, and AT&T Cable** were additionally notified of the proposal but did not respond with formal comments.

PREPARED BY: Morgan Tracy  
Associate Planner

June 30, 2003  
DATE

RAMIS  
CREW  
CORRIGAN LLP

ATTORNEYS AT LAW

1727 N.W. Hoyt Street  
Portland, Oregon 97209

(503) 222-4402  
Fax: (503) 243-2944

## MEMORANDUM

To: Tigard City Council

From: Gary Firestone, City Attorney's Office

Date: January 10, 2006 for February 28, 2006 Meeting

Re: Ash Creek Estates – Hearing on Remand

### BACKGROUND

This matter is before the Council on remand from the Oregon Land Use Board of Appeals for the second time. The Council originally approved the subdivision and related land use applications. On the first appeal to LUBA, LUBA held in favor of the opponents of the project on a few of the many issues that had been raised. On the first remand, the Council addressed the issues remanded by LUBA and again approved the application. A second appeal was filed. In that appeal, LUBA held in favor of the petitioner on a very narrow issue. The original tree plan had designated protection by area, and the tree plan presented in the first remand specified protection on a tree-by-tree basis. Some of the trees in the area designated for protection in the first tree plan were designated for removal in the second tree plan. LUBA held that because some trees were shown for removal that apparently could be preserved, the City's standards for planned development approval, which require maximum protection of trees, had not been shown to be met. LUBA explicitly limited the remand to the question of whether the 23 trees shown as protected in the first tree plan but not protected in the second tree plan could be protected. The LUBA decision has been affirmed without opinion by the Court of Appeals.

In response to the LUBA decision, the applicant submitted a second revised tree plan, dated September 22, 2005, that designates all 23 trees on which the remand was based for protection.

### RECOMMENDATION

Staff and the City Attorney's Office recommend that the application, with the revised tree plan, be approved. We recommend that the findings and conditions adopted as part of the City Council's February 5, 2005 decision be readopted and re-imposed. We further recommend adopting the following additional finding and imposing the following additional condition.

### Additional Finding

CDC 18.350.100B.3.a(1) requires that in planned developments:

- (1) The streets, buildings and other site elements shall be designed and located to preserve the existing trees, topography and natural drainage to the greatest degree possible;

LUBA has remanded this matter on the narrow issue whether this standard has been met, given that the original tree plan showed that trees would be protected within certain areas and the revised tree plan showed that 23 trees would be removed within the area designated for protection in the original tree plan. The applicant has submitted a second revised tree plan, dated September 22, 2005 that protects all 23 trees that were the basis for the LUBA remand. The second revised tree plan is otherwise identical to the revised tree plan submitted after the first remand. LUBA explicitly stated that the remand issue was limited to consideration of those 23 trees.

The Council finds that because the 23 trees at issue will be protected, the standard of CDC 18.350.100B.3.a(1) is met. The site elements have been designed and located to preserve existing trees to the greatest extent possible.

### Additional Condition (Condition 59)

Applicant shall comply with and implement the second revised tree plan (dated September 22, 2005). Applicant shall protect trees designated for preservation in the second revised tree plan as provided in Conditions 55 through 58.



## Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

CHRISTOPHER P. KOBACK  
Direct (503) 778-5382  
chriskoback@dwtt.com

SUITE 2300  
1300 SW FIFTH AVENUE  
PORTLAND, OR 97201-5630

TEL (503) 241-2300  
FAX (503) 778-5299  
www.dwt.com

February 9, 2006

Dick Bewersdorff  
Planning Manager  
City of Tigard  
13125 S.W. Hall Blvd.  
Tigard, OR 97223

Re: 2129 Ash Creek Estates PUD  
LUBA No. 2005-042, Remand

Dear Mr. Bewersdorff:

I have enclosed a copy of a letter dated September 28, 2005 that I submitted to you in response to LUBA's remand in LUBA No. 2005-042 involving Windwood Construction's application to develop property in Tigard. Now that the Court of Appeals has affirmed LUBA's decision, I am resubmitting that letter to you at this time so that you can place it in the record for the upcoming February 28, 2006 hearing before City Council on LUBA's remand.

As set forth in my September 28, 2005 letter, I believe the enclosed material establishes that Windwood Construction is complying with LUBA's remand directive. As such, Windwood Construction respectfully requests that City Council grant final approval for its application for the Ash Creek Estates PUD.

Thank you for your attention to this matter.

Very truly yours,

Davis Wright Tremaine LLP

Christopher P. Koback

CPK/llt

Enclosure

cc: Dale Richards, Windwood Construction  
Gary F. Firestone, Attorney for Respondent





# Davis Wright Tremaine LLP

ANCHORAGE   BELLEVUE   LOS ANGELES   NEW YORK   PORTLAND   SAN FRANCISCO   SEATTLE   SHANGHAI   WASHINGTON, D.C.

CHRISTOPHER P. KOBACK  
Direct (503) 778-5382  
chriskoback@dwt.com

SUITE 2300  
1300 SW FIFTH AVENUE  
PORTLAND, OR 97201-5682

TEL (503) 241-2300  
FAX (503) 778-5299  
www.dwt.com

September 28, 2005

RECEIVED PLANNING

SEP 29 2005

CITY OF TIGARD

Dick Bewersdorff  
Planning Manager  
City of Tigard  
13125 S.W. Hall Blvd.  
Tigard, OR 97223

Re: **2129 Ash Creek Estates PUD**  
**LUBA No. 2005-042, Remand**

Dear Mr. Bewersdorff:

As you no doubt have been advised, the Land Use Board of Appeals ("LUBA") remanded the above-referenced case for the City to consider one specific issue. Beginning on page 20 of LUBA's Final Opinion and Order, dated September 20, 2005, LUBA discusses the Applicant's obligation to preserve trees. On page 22, the Board identifies 23 specific trees that the current submission shows as being removed. LUBA believes on remand the Applicant must explain why those specific trees cannot be preserved. LUBA expressly stated that neither the Applicant nor the City was required to explain the necessity for removing any trees other than those expressly identified by LUBA in footnote 16 of its opinion.

The Applicant has decided that each of the 23 trees identified by LUBA can and will be preserved in the final development plan. Accordingly, I have attached for the City's records and as a supplement to the application, a copy of a Revised Tree Plan, which illustrates the preservation of each of those 23 trees. Pursuant to LUBA's opinion, there are no additional issues the Applicant must address on remand.

Accordingly, pursuant to ORS 227.181(2), the Applicant is requesting that the City proceed with this application on remand and set it for hearing before City Council at the earliest possible date.

Dick Bewersdorff  
City of Tigard  
September 28, 2005  
Page 2



Thank you in advance for your continued cooperation with this matter.

Very truly yours,

Davis Wright Tremaine LLP

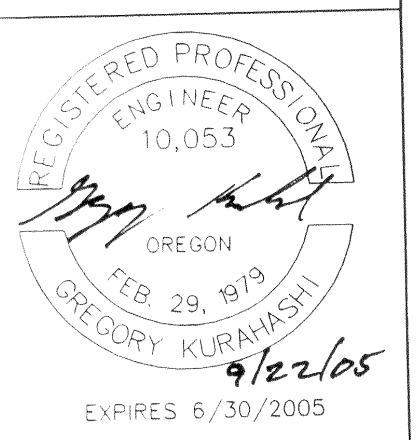
Christopher P. Koback

CPK/lkt  
Enclosure

cc: Dale Richards, Windwood Construction  
Gary F. Firestone, Attorney for Respondent

STK 01/10/05  
Designed B.J.L. 01/10/05  
Drawn 01/10/05  
Check/Revise 01/10/05

REVISIONS



**ASH CREEK ESTATES P.D.**  
CITY OF TIGARD, WASHINGTON COUNTY, OREGON  
DALE RICHARDS - WINDWOOD HOMES  
12855 SW NORTH DAKOTA ST. TIGARD, OR 97223  
(503) 780-4375

**KURAHASHI & ASSOCIATES, INC.**  
Civil Engineering • Water Resources  
Landscape Architecture • Planning  
Environmental • Surveying  
15580 SW Jay Street, Suite 200  
Beverton, Oregon 97008  
(503) 644-6842 fax: (503) 644-9731  
**REVISED TREE PRESERVATION PLAN 9-22-05**  
SHEET NO. 12A of 12

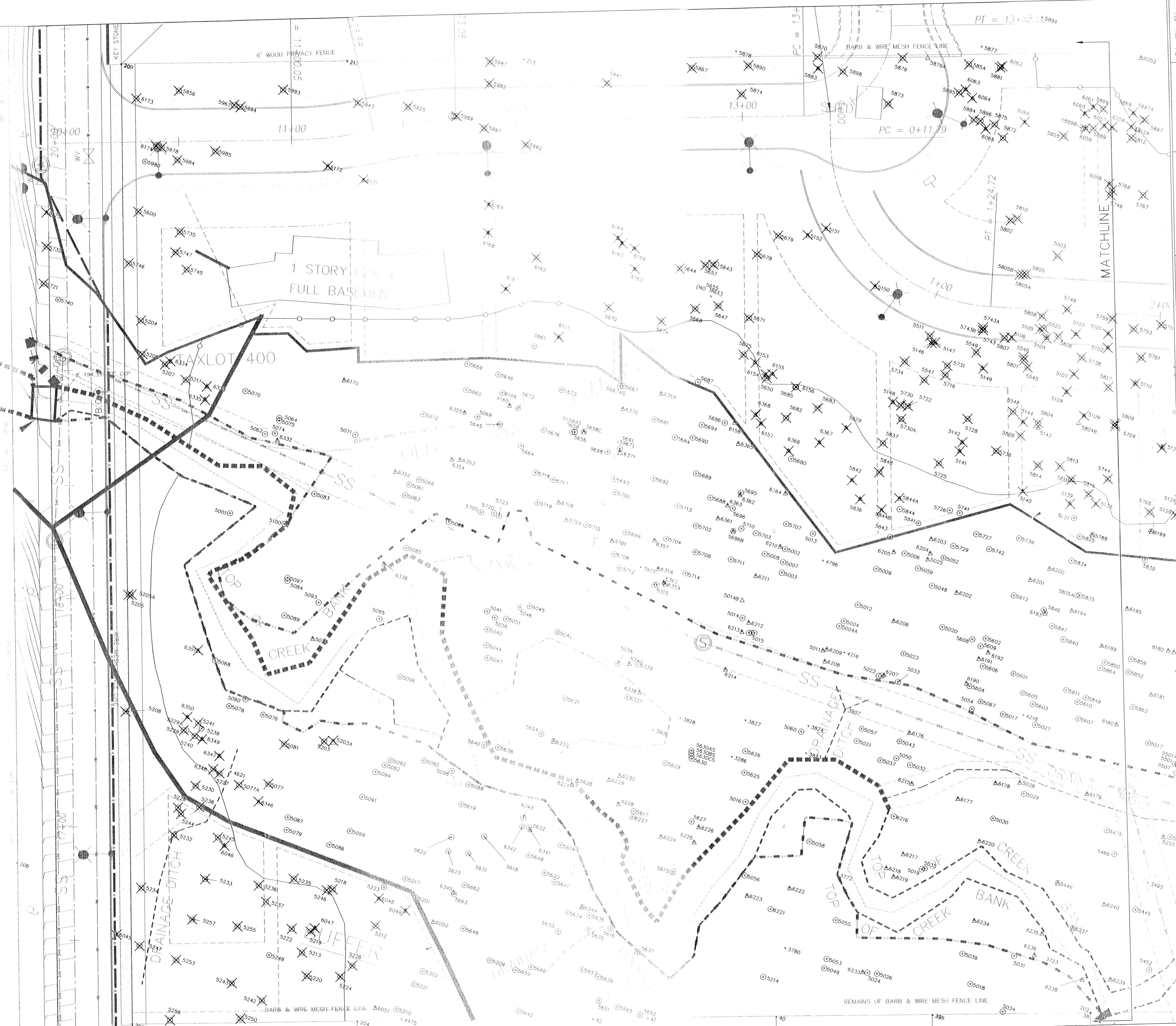
**LEGEND**

- Trees 12" and greater
- Trees less than 12" to be saved
- Trees not confirmed by arborist
- Greater than 12" hazard trees (all hazard trees on lots shall be cut)
- Hazard trees smaller than 12" (all hazard trees on lots shall be cut)
- Trees greater than 12" to be cut
- Trees less than 12" to be cut

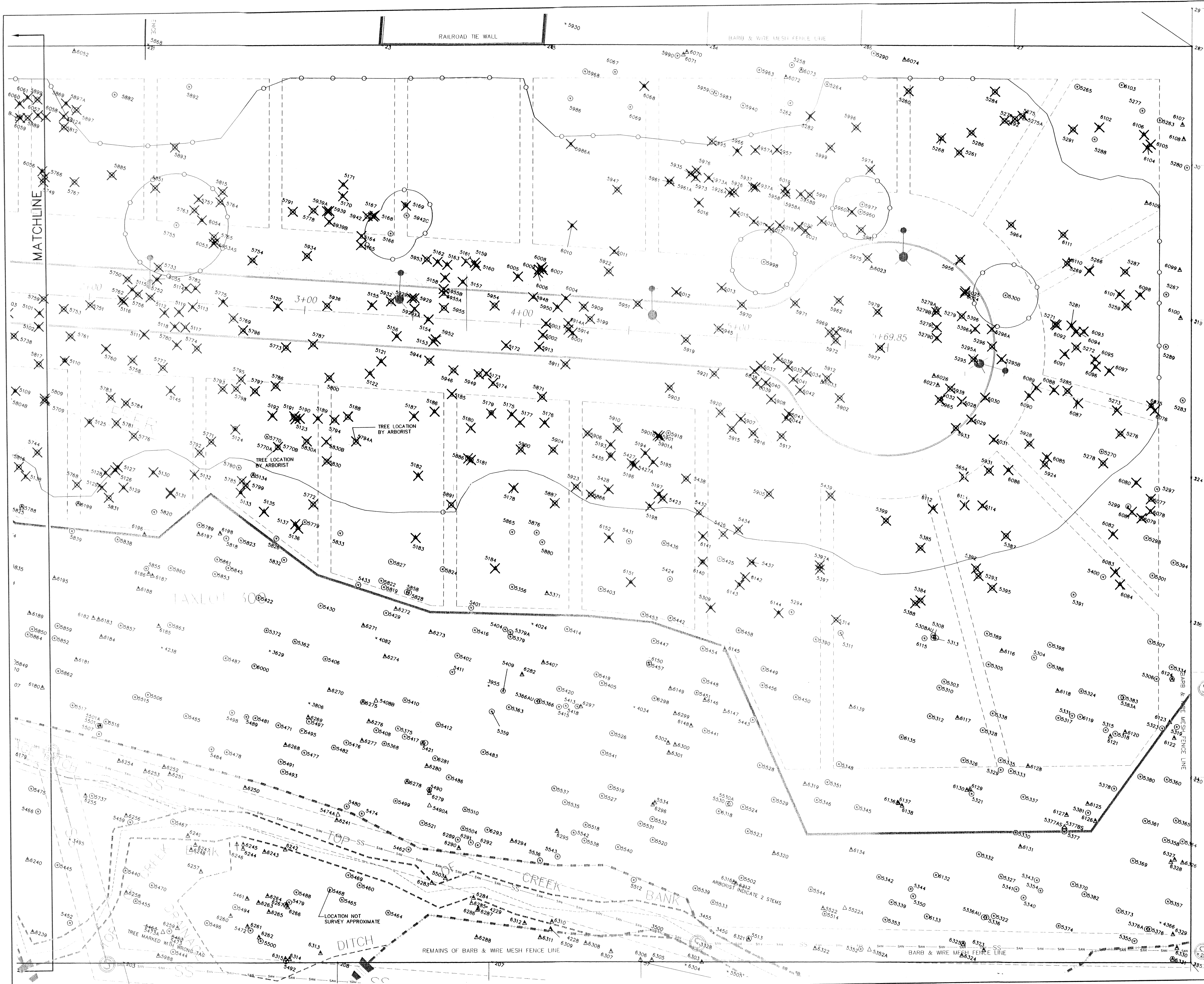
- NOTES:
- SEE ARBORIST REPORT FOR TREE PROTECTION MEASURES.
  - PRE-CONSTRUCTION MEETING WITH ARBORIST PRIOR TO FALING OF ANY TREES ON SITE
  - 3000 AND 4000 SERIES ARE NOT TREES.
  - ALL TREES SAVED WILL BE SUBJECT TO ARBORIST REVIEW IF DURING CONSTRUCTION OF SUBDIVISION OR HOUSES, THE GRADING IS PROPOSED CLOSER THAN 1" PER INCH DIAMETER OF TREE. ARBORIST SHALL PROPOSE NECESSARY MITIGATION.
  - ALL TREES SMALLER THAN 12" WILL BE CUT. TREES LESS THAN 12" AT EDGE OF LOTS MAY BE SAVED UNTIL HOUSES ARE CONSTRUCTED TO MAXIMIZE THE NUMBER OF TREES SAVED.
  - SEE ARBORIST REPORT FOR SIZES, CONDITION AND REMOVAL LIST
  - HAZARD TREES WITHIN THE LOTS SHALL BE CUT
  - HAZARD TREES WITHIN OPEN SPACE SHALL BE REVIEWED BY ARBORIST DURING CLEARING AND WILL BE CUT IF THEY REPRESENT A SIGNIFICANT SAFETY HAZARD
  - ALL TREES TO BE SAVED SHALL HAVE TREE PROTECTION FENCING PLACED AROUND THEM AS DIRECTED BY ARBORIST

METAL FENCE ON STEEL POSTS

NOTE:  
SEE ARBORIST REPORT FOR TREE PROTECTION NOTES.  
FENCE TO BE LOCATED PRIOR TO CUTTING OF TREES EXCEPT AS COORDINATED WITH ARBORIST.







**LEGEND**

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- Trees less than 12" to be saved
- Trees not confirmed by arborist
- Greater than 12" hazard trees (all hazard trees on lots shall be cut)
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- METAL FENCE ON STEEL POSTS
- NOTE: SEE ARBORIST'S REPORT FOR TREE PROTECTION NOTES.
- FENCE TO BE LOCATED PRIOR TO CUTTING OF TREES EXCEPT AS COORDINATED WITH ARBORIST.

**REVISIONS**

By	Date	Description
DTK	01/11/05	Designed
BL	01/11/05	Drawn
DTK	01/11/05	Check/Revise

**REGISTERED PROFESSIONAL ENGINEER**  
10,053  
OREGON  
FEB. 29, 1979  
GREGORY KURAHASHI  
EXPIRES 6/30/2005

**ASH CREEK ESTATES P.D.**

**CITY OF TIGARD, WASHINGTON COUNTY, OREGON**

**DALE RICHARDS - WINDWOOD HOMES**  
12655 SW NORTH DAKOTA ST. TIGARD, OR 97223  
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15580 SW Jay Street, Suite 200  
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**REVISED TREE PRESERVATION PLAN 9-22-05**

SHEET NO. 128 of 12  
KAL# 2129

AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
LOCAL CONTRACT REVIEW BOARD  
AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Post-Project Evaluation Report of the CM/GC (Construction Manager/General Contractor) Contract for the Tigard New Library Project

PREPARED BY: G. Berry <sup>KB</sup> DEPT HEAD OK officer CITY MGR OK CP

ISSUE BEFORE THE LOCAL CONTRACT REVIEW BOARD

Report to the Local Contract Review Board as required by City Purchasing Rules. No action requested.

STAFF RECOMMENDATION

None.

INFORMATION SUMMARY

Public agencies have traditionally employed the design-bid-build method of project delivery for the construction of public projects. However, the traditional method is not always the best way to successfully complete major projects such as the Tigard Library. Alternative contracting methods that provide opportunities for success, which are not available through the traditional method, are often chosen for such projects. The CM/GC (construction Manager/General Contractor) method is a competitive selection process that appeared to be the procurement method best suited for successfully constructing the New Tigard library with time constraints, cost, and quality as major considerations.

The Tigard LCRB (Local Contract Review Board) conducted a public hearing to hear findings justifying procurement of the new Tigard Library construction using the CM/GC competitive selection process. Following the hearing, the LCRB passed LCRB Resolution No. 02-01 (attached) authorizing the CM/GC process for use on the New Library Project. City Code (AR 10.120) requires that an evaluation of the project be submitted to the LCRB within thirty days of acceptance and final payment of the project and that it be made publicly available. The attached evaluation is intended to comply with this requirement although the required submittal period has expired.

The use of the CM/GC method ensured control of costs through the design and construction phases. Hoffman Construction Company of Oregon (the CM/GC selected for the project) was hired early in the design process and was actively involved in the design development and preparation of bid documents for the project. Because of the collaborative nature of the process, the new library was constructed on time and within the budget set for the project.

The project was accepted by the City as substantially completed on July 7, 2004. Final payment was made to the contractor on February 23, 2005.

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## OTHER ALTERNATIVES CONSIDERED

Not applicable.

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## COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

The construction of the new Tigard Library supports the Tigard Beyond Tomorrow Urban & Public Services, Goal #3 – *Adequate facilities are available for efficient delivery of life-long learning programs and services for all ages.*

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## ATTACHMENT LIST

- Attachment 1: Evaluation of Library Construction Manager/General Contractor Contract
- Attachment 2: Contract Status Report- February 14, 2005
- Attachment 3: LCRB Resolution No. 02-01 with Attachment A (2 pages)

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## FISCAL NOTES

The CM/GC contractor agreed to complete the construction for a fixed amount of \$7,855,621.00, the Guaranteed Maximum Price (GMP). In addition, the contractor was entitled to a Contractor's Fee intended to cover profit and overhead expenses of \$236,167.00 that is 2.95 percent of the GMP. The sum of these two fees, \$8,091,788.00, is referred to as the Guaranteed Contract Cost as shown on the attached Contract Status Report. The final cost of the contract, including the contractor's fee of \$236,016.00, is \$8,075,455.90. This amount is \$16,332.10 less than the Guaranteed Contract Cost and is a savings to the project.

Funding was through a \$13 million bond issue approved by the voters on May 21, 2002, \$200,000 from the general fund and two bequests.

## *Evaluation of Library CM/GC (Construction Manager/General Contractor) Contract*

On November 22, 2002, the City entered into a CM/GC (Construction Manager/General Contractor) contract for the new Tigard Library. The contractor was selected through an alternative contracting method using a competitive selection process rather than through competitive bidding. ORS 279C.335 and City AR 10.120 require an evaluation of the public improvement contract including the following items.

(a) *The actual project cost as compared with original project estimates.*

The original project estimate was \$8,073,865 based on 90% complete plans. This amount included a GMP (Guaranteed Maximum Price) of \$7,842,511 plus a contractor's fee of \$231,354. Many of the changes to the project were absorbed in the GMP. The changes that were not absorbed increased the GMP to \$7,855,621.00. The contractor's fee increased to \$236,167.00. The total Guaranteed Contracted Contract Cost was \$8,091,788.00.

The actual project cost is \$8,075,455.90. This amount is the total of all payments to the contractor as detailed on the attached Contract Status Report. This results in a net savings to the City of \$16,332.10.

The costs are summarized below:

Original GMP:	\$7,842,511.00
Original Fee:	\$ 231,354.00 (2.95% of the GMP)
Original Guaranteed Contract Cost:	\$8,073,865.00
Final GMP:	\$7,855,621.00
Final Fee:	\$ 236,167.00
Final Guaranteed Contract Cost:	\$8,091,788.00
Actual Construction Cost:	\$7,839,439.90
Actual Fee:	\$ 236,016.00
Total Project Cost:	\$8,075,455.90

Savings to the City:  $\$8,091,788.00 - \$8,075,455.90 = \$16,332.10$

(b) *The amount of any guaranteed maximum price.*

The original guaranteed maximum price based on 90% complete plans was \$7,842,511. The final guaranteed maximum price was \$7,855,621.00 as shown on the attached Contract Status Report.

- (c) *The number of project change orders issued by the contracting agency.*

Ten change orders, as listed in the attached Contract Status Report, were issued. These change orders included changes to 60 items.

- (d) *A narrative description of successes and failures during the design, engineering and construction of the project.*

The contract was successful in defining a project that met performance, budget and schedule expectations. To ensure coordination of the project, the City selected a project manager from a local firm to coordinate and manage the project for the City. City staff from the Engineering Department and the Library actively participated in the design and construction meetings to provide input and to ensure that project-related decisions were made in a timely manner.

The City included as an initial step in the project a partnering process to encourage the team approach to the project and to produce partnering agreements that all parties involved would be able to agree to and sign. The partnering process was a huge success and was extremely helpful in establishing close working relationships among the participants. The close collaboration among the CM/GC contractor, the architectural firm, and the City resulted in a project that was completed on time, within the budget allotted for the project, and with a level of quality expected.

The CM/GC contractor was invaluable during the design process by providing cost information to assist the decision-making process, and by making suggestions that enhanced constructability of the project. During the construction phase, the CM/GC contractor and managed the bidding process extremely well, received numerous bids that were at or lower than the estimates, and provided the City with the opportunity to add items back into the project to enhance the building and its operation. No change orders were required to correct design deficiencies but were rather directed towards specifying items of higher quality. Bids from subcontractors were lower than originally anticipated. Changes during the construction of the project were made to enhance the quality of the end product.

No failures were encountered. The process, from beginning to end, went exceptionally well.

- (e) *An objective assessment of the use of the alternative contracting process as compared to findings required by ORS 279C.335.*

The required findings and discussions are included in the attached LCRB Resolution No. 02-01. The findings and post-project assessments are as follows:

*Finding: It is unlikely that such exemption will encourage favoritism of substantially diminish competition for the contract.*

*Assessment:* Ten contractors responded to the request for proposals and were evaluated. These contractors are the same as might be expected to submit a bid using the traditional low bid process. The proposals were individually evaluated by a review committee of ten people using uniform evaluation criteria. The five highest rated firms were interviewed by a selection committee consisting of City staff, the architectural firm, and the City's Project



Manager. Subcontractors were selected through open bidding managed by the CM/GC and monitored by the City's Project Manager. As a result, selection of the CM/GC and subcontractors was without favoritism.

*Finding: The awarding of a CM/GC contract pursuant to the exemption will result in substantial cost savings to the City.*

The CM/GC contractor reviewed the plans during design for constructability, provided cost information necessary for sound decision-making, and offered cost saving suggestions. For instance, the contractor reviewed the roof system with subcontractors to ensure compatibility of materials and proper coordination. Equipment, finishes and furnishings were reviewed in detail to ensure that the amount budgeted for these items was used to best advantage based on current prices.

The major concern that led to the selection of the CM/GC competitive selection process was that the traditional low-bid method would result in bids that would be well above the available funding resulting in delays in construction of the project. As a result of the close collaboration among the team members, costs were tightly controlled and cost estimates were reviewed and validated. The CM/GC prepared the bid packages to encourage multiple responses from qualified and experienced subcontractors. As a result, the bids from subcontractors were favorable and often lower than originally anticipated. Changes that were made during the construction of the project were incorporated to enhance the quality of the end product. As a result of the CM/GC contractor's efforts, the project costs were tightly controlled throughout the bidding and construction process resulting in a project that was delivered on time and within the project budget established for the project. The amount of \$16,332.10 representing the difference between the actual project cost and the Guaranteed Contract Cost is a savings to the project and is retained by the City.

i:\eng\greg\lib evaluation\2-28-06 library cmgc evaluation att 1.doc

## CONTRACT STATUS REPORT

Contractor: Hoffman Construction Company  
Updated: 14 February 2005

CONTRACT FACTS:

Original GMP: \$ 7,842,511.00  
GMP Adjustments (Change Orders to Date): (150,000.00) Change Order No. 01 (08/13/03)  
- Change Order No. 02 (10/02/03) - Time/No Cost  
- Change Order No. 03 (11/20/03) - No Cost  
- Change Order No. 04 (01/05/04) - No Cost  
- Change Order No. 05 (01/29/04) - Time/No Cost  
- Change Order No. 06 (02/26/04) - No Cost  
- Change Order No. 07 (03/18/04) - No Cost  
83,578.00 Change Order No. 08 (04/26/04)  
79,532.00 Change Order No. 09 (05/20/04)  
- Change Order No. 10 (06/22/04) - No Cost

GMP to Date: \$ 7,855,621.00

Original Fee \$ 231,354.00 2.95 % of \$7,842,511  
Fee Adjustments to Date: 2,466.00 Change Order No. 08 (04/26/04)  
2,347.00 Change Order No. 09 (05/20/04)

Fee to Date: \$ 236,167.00

Guaranteed Contract Cost: \$ 8,091,788.00

INVOICE DATE	INVOICE NUMBER	COST OF WORK TO DATE	FEE EARNED TO DATE	LESS (5%) RETAINAGE	TOTAL EARNED LESS RETAINAGE	LESS PREVIOUS INVOICES	NET INVOICE	% COMPLETED TO DATE	BALANCE TO PAY
03/10/03	2139902-1	\$ -	\$ 26,761.00	\$ -	\$ 26,761.00	\$ -	\$ 26,761.00	0.0%	\$ 8,065,027.00
08/01/03	App #01	192,921.93	74,032.00	-	266,953.93	26,761.00	240,192.93	3%	7,824,834.07
09/02/03	App #02	630,030.18	83,286.00	-	713,316.18	266,953.93	446,362.25	9%	7,378,471.82
10/02/03	App #03	1,335,751.81	92,540.00	-	1,428,291.81	713,316.18	714,975.63	18%	6,663,496.19
11/05/03	App #04	1,920,797.81	101,794.00	-	2,022,591.81	1,428,291.81	594,300.00	25%	6,069,196.19
12/04/03	App #05	2,846,277.64	111,048.00	-	2,957,325.64	2,022,591.81	934,733.83	37%	5,134,462.36
01/12/04	App #06	3,682,057.39	120,302.00	-	3,802,359.39	2,957,325.64	845,033.75	47%	4,289,428.61
02/05/04	App #07	4,273,658.69	129,556.00	-	4,403,214.69	3,802,359.39	600,855.30	54%	3,688,573.31
03/03/04	App #08	5,044,074.02	138,810.00	-	5,182,884.02	4,403,214.69	779,669.33	64%	2,908,903.98
04/02/04	App #09	5,921,616.08	148,064.00	-	6,069,680.08	5,182,884.02	886,796.06	75%	2,022,107.92
05/04/04	App #10	6,611,909.33	157,318.00	-	6,769,227.33	6,069,680.08	699,547.25	84%	1,322,560.67
06/02/04	App #11	7,142,850.60	166,572.00	-	7,309,422.60	6,769,227.33	540,195.27	90%	782,365.40
07/01/04	App #12	7,442,621.67	175,826.00	-	7,618,447.67	7,309,422.60	309,025.07	94%	473,340.33
08/04/04	App #13	7,683,729.14	185,080.00	-	7,868,809.14	7,618,447.67	250,361.47	97%	222,978.86
09/03/04	App #14	7,726,793.51	194,334.00	-	7,921,127.51	7,868,809.14	52,318.37	98%	170,660.49
09/03/04	App #14F	7,726,793.51	236,016.00	-	7,962,809.51	7,921,127.51	41,682.00	98%	128,978.49
10/04/04	App #15	7,771,434.50	236,016.00	-	8,007,450.50	7,962,809.51	44,640.99	99%	84,337.50
11/02/04	App #16	7,817,508.73	236,016.00	-	8,053,524.73	8,007,450.50	46,074.23	99.5%	38,263.27
12/10/04	App #17	7,827,448.45	236,016.00	-	8,063,462.45	8,053,524.73	9,937.72	99.6%	28,325.55
01/31/05	App #18/19	7,839,439.90	236,016.00	-	8,075,455.90	8,063,462.45	11,993.45	99.8%	16,332.10

TOTAL INVOICES TO DATE \$ 8,075,455.90

LOCAL CONTRACT REVIEW BOARD  
CITY OF TIGARD, OREGON

RESOLUTION NO. 02-01

A RESOLUTION TO APPROVE FINDINGS FOR AN EXEMPTION FROM THE COMPETITIVE BIDDING REQUIREMENT IN ACCORDANCE WITH CITY OF TIGARD LOCAL CONTRACT REVIEW BOARD ADMINISTRATIVE RULE 35.010 TO QUALIFY THE CONSTRUCTION OF THE NEW TIGARD LIBRARY AS A CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACT.

WHEREAS, on May 21, 2002, the voters approved a general obligation bond issue for the construction of a new city library; and

WHEREAS, on May 28, 2002, City Council approved Ordinance No. 02-21 to allow Construction Manager/General Contractor contracts upon approval of certain findings at a public hearing; and

WHEREAS, on July 23, 2002, City Council, acting as the Local Contract Review Board, conducted a public hearing to take comments on draft findings as required by Administrative Rule 35.010; and

WHEREAS, City Council finds that the construction of the new city library may be best accomplished through a Construction Manager/General Contractor contract.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council, acting as the Local Contract Review Board, that:

SECTION 1: The findings shown in Attachment A are hereby approved.

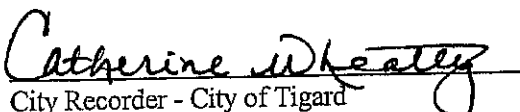
SECTION 2: The New Tigard Library construction is hereby exempted from the competitive bidding process and qualifies for procurement as a Construction Manager/General Contractor contract through the competitive proposal process.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This 23<sup>rd</sup> day of July 2002.

  
Local Contract Review Board Chair - City of Tigard

ATTEST:

  
City Recorder - City of Tigard

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## CITY OF TIGARD

### NEW LIBRARY PROJECT

# FINDINGS FOR AN EXEMPTION FROM THE COMPETITIVE BIDDING REQUIREMENT

The New Tigard Library Project is proposed for construction through the Construction Manager/General Contractor competitive selection process. The following are findings for an exemption from the competitive bidding requirement in accordance with Local Contract Review Board Administrative Rule 35.010.

**Finding: It is unlikely that such exemption will encourage favoritism or substantially diminish competition for the contract.**

**Discussion:** The CM/GC is selected through a competitive selection process to provide both construction management and general contracting services. No reduction of competition is expected since the proposed process is open to the same contractors that would have participated in the traditional low bid method. Uniform evaluation criteria will be used in the selection of the CM/GC firm, and the construction work elements will be subcontracted and procured through open bids managed by the CM/GC.

**Finding: The awarding of a CM/GC contract pursuant to the exemption will result in substantial cost savings to the City.**

**Discussion:** Substantial cost savings are expected through adoption of the CM/GC process. The following are the reasons supporting the expectation that substantial cost savings would be realized:

- This method has the potential for achieving significant cost savings through early involvement of the contractor in the design phase of the project. By having the contractor available in the early stages of the design, the contractor would be able to review the design, propose cost saving revisions, and ensure the constructability of the project so that costly change orders are less likely.
- Construction of the library involves a wide range of construction elements ranging from the various building trades to public street improvements. Cost saving are expected from the CM/GC being able to separately contract for each of the elements.
- The CM/GC method avoids the cost in time and money involved in rebidding of the project, should bids come in higher than expected. A traditional bid process runs the risk of obtaining bids that exceed the project budget. In the CM/GC project delivery method, construction costs are determined at an earlier time and changes to the design and scope of the project necessary to meet the project budget are more easily achieved.

AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Intergovernmental Agreement (IGA) for Joint Funding of a Water Supply System Plan with the City of Lake Oswego

PREPARED BY: Dennis Koellermeier DEPT HEAD OK DK CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

Consider an IGA for joint funding of a water supply system plan with the City of Lake Oswego.

STAFF RECOMMENDATION

Staff recommends the Council approve the IGA for joint funding of a water supply system plan with the City of Lake Oswego.

INFORMATION SUMMARY

The City of Tigard continues to work toward identifying a long-term water source and establishing an equity position in such a source. Lake Oswego is one of four possible long-term water supply options being explored. Tigard currently obtains a small portion of its water from the City of Lake Oswego through a 1983 water sales agreement. In September 2005, the City of Tigard completed a Water Supply Feasibility Project study. This study concluded that it would be possible for Lake Oswego and Tigard to jointly develop Lake Oswego's capital infrastructure and remaining water rights. Both parties would benefit from such a partnership. Tigard would establish ownership in a long-term water source; Lake Oswego would protect its water rights and reduce costs since, as a partner, Tigard would fund a portion of the improvements.

The next step is to investigate the technical, financial and legal issues influencing this potential partnership. To address these matters, a water supply system plan is proposed. This plan will be a comprehensive document. Once completed, Tigard and Lake Oswego should have enough information to determine if the proposed partnership will meet each city's requirements. Should the plan's outcome be favorable, Tigard and Lake Oswego will be able to proceed directly to an intergovernmental agreement to construct the necessary improvements.

At their February 8 meeting, the Intergovernmental Water Board expressed its support for the agreement.

OTHER ALTERNATIVES CONSIDERED

The Council could choose not to approve the IGA. This action would likely remove Lake Oswego from consideration as a water source option for Tigard.

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## COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Other Important City Council Goals: Secure Long-Range Water Source(s)  
Urban & Public Services Goal 1, Water and Stormwater, Strategy 1: Investigate developing partnership or contacts with other jurisdictions to develop a long-term source of water.

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### ATTACHMENT LIST

Intergovernmental Agreement

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### FISCAL NOTES

The cost of the agreement will be divided equally between the City of Lake Oswego and the City of Tigard. The study is expected to cost between \$250,000 and \$300,000, with Tigard's share ranging from \$125,000 to \$150,000. Tigard has allocated \$50,000 in its FY '05/06 budget for the plan, but only projects to spend \$20,000. The remaining \$30,000 will be carried forward and will be included in the \$130,000 requested for this project in the FY '06/07 budget.

**INTERGOVERNMENTAL AGREEMENT  
FOR  
JOINT FUNDING  
OF A  
WATER SUPPLY SYSTEM PLAN  
FOR THE  
CITY OF LAKE OSWEGO AND THE CITY OF TIGARD**

This ORS 190 Intergovernmental Agreement is entered into by the following parties: the City of Lake Oswego, an Oregon Municipal Corporation, (hereinafter "Lake Oswego"), and the City of Tigard, an Oregon Municipal corporation, (hereinafter "Tigard"), hereinafter referred to collectively as the "parties". The parties have agreed to enter into this Intergovernmental Agreement pursuant to ORS 190.003 – 190.110, which authorizes units of local government to enter into such agreements.

**RECITALS**

WHEREAS, pursuant to the terms of a water sales agreement executed in 1983, the City of Lake Oswego has supplied surplus water to the City of Tigard, and

WHEREAS, since 1983 the parties have mutually benefited from this water supply relationship, and

WHEREAS, in the past the parties have jointly and individually funded and completed engineering studies and water master plans that have identified the mutual benefits of continuing the existing water supply relationship and jointly developing a long term water supply partnership, and

WHEREAS, Tigard desires to partner in the development of a long term source of new water supply for its customers and desires to secure an equity position in such a new water supply, and Lake Oswego is willing to consider a partnership in the development of any new water rights or facilities, which partnership may include shared ownership, and

WHEREAS, Oregon Administrative Rules Chapter 690, Division 315 "Water Rights Permit Extensions" adopted on November 22, 2005, require municipal water supply agencies with undeveloped water rights to demonstrate to the satisfaction of the State water resources department, their ability to beneficially use undeveloped water or risk losing such rights, and

WHEREAS, the City of Tigard commissioned a study entitled "Water Supply Feasibility Project", which was completed and dated September 2005, and

WHEREAS, that study concluded that it was feasible for Lake Oswego to supply water to Tigard on a long term basis and that partnering with the City of Tigard to develop Lake Oswego's undeveloped water rights could achieve many benefits including more efficient use of the water resource, improved economy of water supply, protection of existing permitted water rights, improved water supply reliability, and more effective joint response to regulatory challenges, and

WHEREAS, the parties have identified the need to conduct a more comprehensive study of the costs and timing of jointly developing Lake Oswego's currently undeveloped water rights and that time is of the essence in completing this study:

NOW THEREFORE, the parties agree as follows:

#### SECTION 1 – Obligations of the Parties

1. The parties agree to jointly fund an engineering study that will be comprehensive in scope and that will complete the various tasks as outlined in the Scope of Work attached herein as Exhibit "A".
2. Lake Oswego will prepare the necessary documents to solicit and procure the services of an engineering consulting firm for the study
3. The parties will jointly participate in the review/evaluation and selection process for the engineering consultant
4. Once an engineering consultant has been selected, Lake Oswego will contract with and undertake the day to day management of the work of the selected consultant
5. The parties will jointly participate in the provision of all documentation requested by consultant and necessary for the completion of the Scope of Work
6. The parties will, as required by the Scope of Work, jointly review and comment on all memoranda, draft reports and other documentation developed by the consultant in the conduct of the work
7. The staff of each city will be responsible to communicate all relevant information to their councils as to the progress, status and recommendations of the study. Each party agrees to facilitate the work of the other in this regard as may be requested by each of the other during the conduct of the work

#### Section 2 – Allocation of Study Costs and Payment

1. The City of Lake Oswego will be the paying agent for the parties.
2. Amendments to the approved Scope of Work may be made by mutual agreement of the parties.
3. The costs of any such amendments approved by the parties will be allocated to each party equally unless mutually agreed otherwise
4. The City of Lake Oswego will make all payments due the consultant pursuant to the terms of the contract executed between Lake Oswego and consultant. Tigard will reimburse Lake Oswego for one half of the expenditures. Lake Oswego will invoice Tigard monthly coinciding with the work-in-progress invoicing submitted by the consultant. Payments shall be made to the City of Lake Oswego Finance Department, P.O. 369 Lake Oswego, Oregon 97034. Any amount unpaid after thirty (30) days shall accrue interest at the rate of nine percent (9%) per annum until paid.



### SECTION 3 – Ownership of Work Products

1. Work products generated by consultant pursuant to the Scope of Work will be jointly owned by the parties
2. At the completion of the study, Lake Oswego will provide Tigard with five copies of the final report in hard copy and electronic format

### SECTION 4 – Dispute Resolution

If a dispute arises between the parties regarding this Agreement, the parties shall take the following steps:

#### Step One (Negotiation)

Upon written notice provided by one party to the other of a dispute regarding this Agreement, the parties shall first attempt to resolve the dispute through negotiation. The City Manager or another person designated by each of the disputing parties will negotiate on behalf of each entity. If the dispute is resolved at this step, the resolution shall be reduced to writing and signed by each party.

#### Step Two (Mediation)

If the dispute cannot be resolved at Step One within thirty (30) days of the date of mailing of the written notice of the dispute, the parties shall attempt to resolve the dispute through mediation. If the parties cannot agree on a mediator, they shall request a list of five (5) mediators from the Presiding Judge of Clackamas County Circuit Court. The parties will attempt to mutually agree on a mediator from the list provided, but if they cannot agree, the mediator will be selected by the Presiding Judge of Clackamas County Circuit Court. The cost of mediator shall be borne equally between the parties, but each party shall otherwise be responsible for its own costs and fees therefore. If the issue is resolved at this step, the resolution shall be reduced to writing and signed by each party.

#### Step Three (Arbitration)

If the parties are unsuccessful at Steps One and Two, the dispute shall be resolved by binding arbitration proceedings pursuant to ORS 36.600 et seq. The parties shall follow the same process as in Step Two for the selection of the arbitrator. The prevailing party in Step Three shall be entitled to reasonable attorney fees and costs which have been incurred during the Step Three process, as determined and awarded by the arbitrator. In addition, in the event of a petition to the court to for judicial relief related to the arbitration, such as a petition to seek confirmation, vacation, modification or correction of an arbitration award, or in the event of judicial action to enforce an arbitration award, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees. In the event the prevailing party in the

arbitration or related judicial action is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon area for the type of legal services performed.

#### SECTION 5 - Amendments

1. The terms of this agreement may be amended by mutual agreement of the parties. Any amendments shall be in writing, shall refer specifically to this agreement, and shall be executed by both parties.

#### SECTION 6 - Notice

1. Written Notice Addresses. All written notices required under this agreement shall be sent by first class mail to:

City of Lake Oswego:      City Manager  
                                    City of Lake Oswego  
                                    P.O. Box 369 Lake Oswego, Oregon 97034

City of Tigard:              City Manager  
                                    City of Tigard  
                                    13125 SW Hall Blvd., Tigard, Oregon 97223

IN WITNESS WHEREOF, the Parties have set their hands and affixed their seals as of the date and year hereinabove written.

Lake Oswego has acted in this matter pursuant to Resolution No. \_\_\_\_\_ adopted by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Tigard has acted in this matter pursuant to Resolution No. \_\_\_\_\_ adopted by its City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

City of Lake Oswego,  
by and through its city officials

By: \_\_\_\_\_  
          Judie Hammerstad, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
David Powell, City Attorney

ATTEST:

By: \_\_\_\_\_  
Robyn Christie, City Recorder

City of Tigard,  
by and through its city officials

By: \_\_\_\_\_  
Craig Dirksen, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
Gary Firestone, City Attorney

ATTEST:

By: \_\_\_\_\_  
Cathy Wheatley, City Recorder



**REQUEST FOR PROPOSALS  
TO PROVIDE PROFESSIONAL ENGINEERING SERVICES  
FOR  
AN ANALYSIS OF A JOINT WATER SUPPLY SYSTEM  
FOR THE  
CITIES OF LAKE OSWEGO AND TIGARD**

The City of Lake Oswego, Oregon has selected your firm to submit a proposal for provision of professional engineering services related to an analysis of a joint water supply system for the Cities of Lake Oswego and Tigard. In general, this analysis will require a comprehensive and in-depth review, analysis and update of previous planning and engineering studies as regards:

- Current and forecasted water demands of both City's through "build-out";
- Options available to meet the combined build-out water demands of each City assuming the preferred source of supply is the Clackamas River;
- Condition assessment and valuations of existing water utility infrastructure used and useful in supply water for the two cities;
- Water rights and water availability;
- Requirements for augmenting, improving and replacing existing utility infrastructure to provide desired levels of service for build-out water system demands as well as current and future drinking water regulations
- Environmental and land use permitting requirements necessary for the construction of new water infrastructure to supply, treat and convey build-out water demands
- Financing strategies and water rate analyses

**EXISTING SYSTEM DESCRIPTION**

Surface water from the Clackamas River is withdrawn near the town of Gladstone, Oregon and pumped via the City's raw water intake and pumping facility through a 27-inch diameter pipeline crossing underneath the Willamette River to the City's treatment plant located just north of Mary S. Young State Park in the City of West Linn. The City has permits to appropriate up to 38 MGD from this source in addition to a permit to appropriate up to 3.87 MGD from the Willamette River. 32.3 MGD of the City's Clackamas source is authorized pursuant to a permit

with a priority date of March 14, 1967. This date is important as it precedes the priority date of the States in-stream water right. 16.1 MGD of this "senior" permit has been certificated. The remaining 22 MGD of Clackamas water permitted for municipal use will need to be developed in order to meet the majority of future water demands for both cities.

The City's water treatment plant (WTP) was constructed in 1967 with an original treatment capacity of 10 MGD. An expansion to the plant in 1980 provided an additional 6 MGD of capacity for a current total of 16 MGD. Water treatment operations and processes include prechlorination, coagulant addition and in-line mixing, sedimentation, dual-media filtration, post-chlorination and pH adjustment. Disinfection is accomplished using liquid sodium hypochlorite, lime and carbon dioxide are used for alkalinity and pH adjustment, PAC is added for seasonal taste and odor control and polymers are used as coagulant and filter aids. Filter backwash that is not recycled is wasted to a series of four (4) concrete lagoons where supernatant is decanted to promote solar drying of alum sludge. The dried sludge is trucked off-site to a landfill.

The existing treatment plant is sited within an existing residential neighborhood and currently occupies property totaling 6.05 acres. In the early 1990's, the City acquired property contiguous to the south property line of the plant adding an additional 3.30 acres of land area. Of the 9.35 acres currently under City ownership, plat restrictions effectively preclude use of the recently acquired 3.30 acres until such time as 75% of the property owners in the plat agree to amend the plat covenants to allow other than single family residential dwellings.

Treated water is pumped from the plant through about 37,000 feet of 24-inch diameter steel and ductile iron transmission mains to the City's 4 MG Waluga reservoir. This reservoir serves as the starting point for parallel 16 and 24-inch transmission mains that provide water to the City of Tigard via its Bonita Road pump and metering station.

## **SCOPE OF SERVICES REQUESTED**

The City desires that the bulk of the effort described in the tasks below be completed by August 31, 2006. The order of the tasks shown below is not meant to imply a serial approach to the conduct of the work nor do they reflect all possible tasks or analyses that may need to be conducted to achieve a thorough understanding of the permitting, design, financing, governance and construction related issues and costs a project of this scope might produce. The Cities desire that the level of analysis be sufficiently rigorous to provide the technical staffs and City Councils information and cost projections that could allow each agency to initiate discussion of a cooperative agreement to implement the recommendations of this study effort, should they so choose. To that end, Consultants are encouraged to include within their proposals any scope items or tasks they deem to have been omitted in this RFP, and that they believe are necessary to successfully complete this work. At a minimum, engineering and planning tasks will include:

A. Evaluate existing water supply system - This evaluation will include the following sub-tasks:

1. Site visits to existing facilities e.g., intake facility, water treatment plant, Waluga Reservoir and Bonita Road pump station

2. Interviews with Lake Oswego plant personnel
3. Review of existing reports, studies and master plans. These include:
  - "Water System Study for the City of Lake Oswego", November 1974, CH2M HILL
  - "Tigard Water System Study", January 1992, James M. Montgomery
  - "Final Report for Evaluation of Water Service With and Without Tigard", July 1994, CH2M HILL
  - "Water Supply Plan Update" for City of Tigard, August 1994, Murray, Smith & Assoc., Inc.
  - "Water Treatment Plant Facilities Plan for the City of Lake Oswego", March 1997, Carollo Engineers, PC
  - "Pilot Study for Treatment of Water from the Clackamas River", Final Report March 1997, Black & Veatch/CH2M Hill.
  - "Clackamas Basin Water Treatment and Supply Options Study", January 1998, Black & Veatch; CH2M HILL; McKeever/Morris, Inc.
  - "Concept Overview and Decision Guidance Document for Water Supply Options", February 2000, Murray, Smith & Assoc., Inc.
  - "Regional Transmission and Storage Strategy", July 2000, Montgomery Watson, Inc.
  - "Water Supply Master Plan Update for City of Lake Oswego", January 2001, Montgomery Watson Harza, Inc.
  - "Biological Assessment for the City of Lake Oswego Clackamas River Water Intake Modifications", February 2002, MWH, Inc.
  - "Cathodic Protection of Raw and Finished Water Transmission Mains", February 2003, Cascade Corrosion Consulting Services, Inc.
  - "Clackamas River Intake, Structural Evaluation and Finite Element Analysis", September 2005, MWH, Inc.
  - "Water Supply Feasibility Project for the City of Tigard", September 2005, CH2M HILL, Inc.
  - "City of Lake Oswego Finished Water Pumping Surge Control System Review", February 2005, Murray, Smith & Associates, Inc.
4. Compilation and review of existing raw water quality data, treatment plant performance data from plant database files and other sources.
5. Review of City of West Linn Development Codes, City of Lake Oswego Development Code, City of Gladstone Development Code, Uniform Building Code, Uniform Fire Code and other pertinent regulatory documents.
6. Review of existing record drawings for construction of the City's intake, treatment plant, transmission mains, etc.
7. Conduct an engineering appraisal of the existing system including all facilities currently in use to supply surplus water to the City of Tigard.

**Deliverable:** Prepare and deliver six (6) copies of a technical memorandum summarizing the salient information gleaned during the conduct of the above tasks and that relate to and facilitate the conduct of the remaining tasks requested in this scope of work including those additional tasks as may be proposed by the consultant and included in the requested scope of services.

**B. Review, evaluate and update existing water demand forecasts** – Collect and compile population and water demand data from available local and regional sources to understand current water demand behaviors and forecast future demands for each City. Where appropriate and as may be authorized by each City use new demand data for subsequent planning and engineering tasks.

**C. Evaluate water treatment alternatives** – Based upon the conduct of the above tasks, identify and evaluate the range of water treatment technologies and processes that could be implemented to expand present treatment capacity and meet current and pending regulatory water quality requirements under two capacity scenarios, i.e., 32 MGD and 38 MGD. Identify and evaluate the full range of planning, permitting, design, constructability and operations and maintenance issues associated with each feasible treatment alternative. The effort expended for this task should be sufficiently rigorous to allow the development of budget level estimates of capital and O&M costs and an understanding of operations staffing and skill level needs.

**D. Evaluate river intake alternatives** – Use the information gained in the above tasks to evaluate alternatives for the City's river intake facility. Conduct the following sub-tasks.

- ✓ Hydraulically model and analyze the existing intake facility to determine maximum sustained pumping capacity with current wet-well geometry. Use historical stream flow records or other sources of information to establish minimum river levels for worst case analysis purposes
- ✓ Identify deficiencies in the existing intake facility relative to plans to expand pumping capacity up to 32 MGD. Determine budget level costs associated with upgrades to achieve 32 MGD pumping capacity
- ✓ Evaluate the full range of planning, permitting, design and construction issues associated with constructing a new intake facility capable of diverting and pumping between 32 and 38 MGD at or very near the current intake site. Develop budget level costs for a new intake facility

**E. Evaluate transmission system alternatives** – Evaluate the costs to augment existing transmission capacity with parallel pipe lines against the costs for complete replacement of the existing transmission mains. Identify a preferred alternative for meeting potential capacity needs of up to 38 MGD for raw water piping and up to 46 MGD for finished water transmission piping. Conduct routing analyses and constructability reviews to determine preferred routes and to facilitate evaluation of land use and regulatory permitting in subsequent tasks.

**F. Land use and regulatory permitting** – Evaluate the full range of land use and regulatory permitting requirements for tasks B., C., D and E. Sub-tasks will include:

- ✓ Meeting or interviewing staff from regulatory agencies at an appropriate stage in this study effort to facilitate their understanding of the genesis of the project, its intent and possible schedule. Agencies include but are not limited to ACOE, DEQ, DSL, NOAA Fisheries, ODFW, USFW, Oregon Health Department, Cities of Gladstone, West Linn and Lake Oswego, Clackamas County, Oregon State Marine Board, Oregon State Parks, ODOT region 2A and others as may be appropriate

- ✓ Identifying costs associated with securing the necessary land use and regulatory approvals as well as costs for conducting specific studies or assessments that can reasonably be assumed to be required as part of the permit acquisition process. Such additional studies or assessments might include Biological Assessments, Hydrologic or hydraulic analysis, geotechnical reconnaissance and reporting, attendance at public meetings, preparing land use applications, water rights transfers, etc.

**Deliverable:** Prepare and submit six (6) copies of a technical memorandum documenting the findings, conclusions and recommendations developed at the completion of tasks B, C, D, E and F. Provide a table of contents and tabs for the various sections of the memorandum. Format the memorandum for ease of use and understanding by non-technical stakeholders.

**G. Conduct financial analysis** – Using the information developed through completing the above tasks, conduct a thorough financial analysis of the capital and operating costs for the preferred alternatives for source of supply, water treatment and transmission systems. Subtasks will include:

- ✓ Valuations of the depreciated replacement or “book value” of existing capital that would remain in use for a joint water supply system
- ✓ Compilation of budget level capital costs associated with preferred alternatives identified in the above tasks
- ✓ Development of operating and maintenance costs for preferred alternatives over a 20-year period using a range of discount rates
- ✓ Identifying alternate scenarios for allocating existing and new capital and O&M costs to Lake Oswego and Tigard based upon each agencies funding capacities, constraints and forecasted rate of water demand growth through build out
- ✓ Identifying the rate implications of each allocation scenario on each agency
- ✓ Identifying financing options available for funding capital costs

**H. Evaluate Organizational Structures** – This task will require the consultant to research and identify Oregon statutory and administrative rules governing the creation of new governmental bodies and to identify and discuss the pros and cons of each possible forming mechanism. The general structure, authority and operating characteristics of each possible governmental body should be described and discussed. Potential administrative or operational challenges should be vetted for each option identified.

**I. Strategic outreach and communications plan** – Prepare a proposed outline and schedule of activities critical to a successful outreach and communications plan in support of a possible joint water supply agency between Lake Oswego and Tigard. This plan should at a minimum include discussion of the following:

- ✓ Identifying stakeholders and developing templates for stakeholder specific messages
- ✓ Strategies for controlling the flow and content of information
- ✓ Means and methods to engender trust
- ✓ Developing the “message”



**Deliverable:** Prepare and submit six (6) copies of a final report combining all technical memoranda and task findings developed through the completion of all preceding tasks. The report shall be submitted in a three-ring binder, with tabbed sections and an executive summary. Printing shall be double-sided. Figures and tables shall use colored text or graphics where appropriate to improve readability and understanding.

**J. Tasks or Support Provided by City of Lake Oswego/Tigard Staff**

1. Provide the consultant copies of all available, relevant utility "as-built" plans, topographical maps, reports, studies etc., related to the existing and relevant components of water utility infrastructure.
2. Provide the consultant with a copy of the City's hydraulic model (MWSO H2O Net) including input data files.
3. Provide the consultant with access to each agency's rate models for rate forecasting as needed.
4. Timely review and feedback on all technical memoranda, preliminary reports and findings developed by the consultant in the conduct of this study.

**PROPOSAL REQUIREMENTS**

Consultants are encouraged to provide clear, concise proposals that contain only the information required to respond to this proposal and the Requested Scope of Services. Each proposal shall include the following information:

1. A detailed description of the consultant's approach to each major task element of the project. This description should include a discussion on how essential personnel assigned to any particular task element will benefit the overall objectives of the project. The description should also include specific examples of recent relevant work which best demonstrates the consultant's qualifications to accomplish the objectives of each task element for the benefit of the project
2. Based upon the preceding Scope of Services, provide a detailed project schedule, which identifies critical paths and milestones for major task elements and the overall project. Show interrelationships between tasks and key points where progress is dependant upon client actions
3. Discuss in detail strategies your firm (team) would employ in an effort to secure permits from Federal/State/local regulatory agencies as required. Identify any unique talents, experience or insights that you feel increase the likelihood of success in this regard
4. Discuss in detail your approach to developing a collaborative process that would include stakeholders in the communities of Lake Oswego and Tigard
5. Explain why the cities of Lake Oswego and Tigard would benefit from your services on this project

## SUBMISSION OF PROPOSALS

Submit six (6) copies of the written technical proposal in a sealed envelope to the City of Lake Oswego Engineering Division at City Hall until 4:00 PM Pacific Standard Time on April 12, 2006. Proposals shall be addressed to:

Joel B. Komarek, P.E., City Engineer  
"Proposal for an Analysis of a Joint Water Supply System – Lake Oswego and Tigard"  
City of Lake Oswego  
380 A Avenue  
Lake Oswego, Oregon 97034  
(503) 635-0270

## EVALUATION OF PROPOSALS

The proposal selection committee will review and evaluate all technical proposals received based upon the criteria discussed below. Proposals received after the close of the proposal period will be considered non-responsive and will be returned unopened. Each evaluation criterion has been assigned points based on its perceived value to the services requested.

### Technical Proposal (100 point maximum)

- A. **Firm Qualifications:** Past performance of the firm providing services based upon scopes of work similar to that requested herein. Current workload and capacity to commit qualified staff for the duration of this study effort. (35 points).
- B. **Project Manager and Key Staff Qualifications:** Specific experience of the proposed Project Manager and key staff in successfully completing similar studies and investigations. Discuss unique expertise and skills of staff that will benefit the project. Discuss recent examples of how the proposed Project Manager and key staff used such unique expertise and skills to deliver a work product of exemplary quality under tight schedules. (30 points).
- C. **Project Management Plan:** Describe the management plan proposed for the conduct of the work requested herein. Key points may include the availability of key personnel immediately and throughout the project, ability to control project schedule and cost and internal quality control/quality assurance procedures. (30 points).
- D. **Experience working with the City of Lake Oswego and Tigard.** The City desires to complete the bulk of this study effort by August 31, 2006. The success of this study effort will depend in part on the consultant's experience and knowledge of current water rights issues on the Clackamas River, the utility systems of Lake Oswego and Tigard, Federal, State and local land use codes and the local political climate. In recognition of this, points will be

awarded to proposing firms who have conducted engineering and planning studies for Lake Oswego and Tigard. (5 points).

The selection committee will review all conforming technical proposals received in response to this RFP, and based upon the above scoring develop a short list of three (3) firms. These three firms may be invited to oral interviews, anticipated to be held April 20, 2006, if it is the consensus of the committee that interviews are needed to better ascertain qualifications or the consultant's understanding of the project requirements. However, the committee reserves the right to forego oral interviews and enter into contract negotiations with the top-ranked consultant firm, if in the committee's opinion there is a clear distinction in qualifications and project understanding between the top-ranked proposal and the remaining two.

### **Contract Negotiations**

The City will enter into contract negotiations with the top-ranked firm to confirm project understandings, scope, project deliverables and fee. Should the City and the top ranked firm be unable to successfully negotiate a contract, negotiations with the second ranked firm will be initiated and so on until a contract is successfully negotiated between the City and one of the top three ranked firms.

### **CONSULTANT SELECTION SCHEDULE**

<b><u>Item</u></b>	<b><u>Date</u></b>
Requests for Proposals	March 17, 2006
Proposals due from Consultants	April 12 2006
Consultant interviews (tentative)	April 20, 2006
Select consultant	April 24, 2006
Complete final scope and fee negotiations	April 26, 2006
Award Consultant contract	May 2, 2006

### **ADMINISTRATIVE INFORMATION**

Joel Komarek is the City's Project Manager for this project. Please contact Joel at 503.697.6588 with any inquiries regarding this RFP.

The selected firm will be expected to execute a professional services agreement with the City containing the City's standard contract language and requirements concerning General Liability and Professional Errors and Omissions insurance.

Attachments:           City of Lake Oswego Professional Services Agreement

AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE: Hall Blvd./99W Design Modifications

PREPARED BY: Phil Nachbar DEPT HEAD OK TC CITY MGR OK CR

ISSUE BEFORE THE COUNCIL

To provide direction to staff in pursuing design modifications of the intersection at Hall Blvd./99W intersection to include pedestrian improvements, landscape enhancements, and a potential Gateway. Approve Amendment #1 to the streetscape contract with OTAK, Inc. in the amount \$7,000 - \$10,000 to provide design and engineering services for intersection modifications.

Washington County is presently managing the design of improvements to the intersection. There is an opportunity now as part of the design process for the City to potentially include these additional design modifications.

STAFF RECOMMENDATION

Direct staff to pursue design modifications to the Hall Blvd./99W intersection to incorporate pedestrian improvements and landscape enhancements. Approve Amendment #1 to the streetscape contract with OTAK, Inc., (#0557) in the amount \$7,000 for design and engineering services.

INFORMATION SUMMARY

The intersection at Hall Blvd./99W is scheduled for capacity improvements for construction in 2007-08. Washington County is managing the project with the use of a consultant. The design process has begun and will be carried out over the next 9 months. City staff has identified an opportunity to provide specific design recommendations as a part of this process to be more consistent with the principles and objectives of the Tigard Downtown Improvement Plan (TDIP) which include the following elements: 1) Hall Boulevard/99W intersection as a gateway to downtown; 2) Pedestrian and bike emphasis; and 3) Potential to incorporate "green street" elements. All three design elements are referenced in the TDIP.

In response to an update to the City Center Advisory Committee (CCAC) regarding future improvements to the intersection at its December 22, 2005 meeting, members of the CCAC requested staff to inquire about whether a Special Transportation Area (STA) could be obtained for 99W as it borders the Downtown. Although the Special Transportation Area designation was rejected by ODOT as an option during the Tigard Downtown Improvement Plan development process, the CCAC maintains an interest in the design of the Hall Blvd./99W intersection. Staff identified the opportunity for design collaboration by contacting Washington County. Washington County project staff agreed that the City of Tigard could provide specific design improvements that could potentially be included in the final design given review and approval by both Washington County and ODOT.

The CCAC was advised of discussions with Washington County regarding the potential to modify the intersection design to achieve the objectives of the Tigard Downtown Improvement Plan. The CCAC was in full support of this idea.

Staff currently does not have the expertise to provide both landscape architectural and engineering design services to carry out this work. Subject to Council approval, staff prepared an amendment to the streetscape design contract with OTAK, Inc. in the amount \$7,000 - \$10,000 to include their technical assistance in devising and conveying design improvements to the intersection. The amount of the amendment is for \$10,000 as required by OTAK review. The City has specified \$7,000 in the scope, with the option to go to \$10,000 if additional consultant time is needed.

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#### OTHER ALTERNATIVES CONSIDERED

Foregoing design input at this time would result in a permanent lost opportunity to influence specific design for the intersection improvements at Hall Blvd./99W.

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#### COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

Council Goal: Implement Downtown Plan

Council Goal: Improve 99W Corridor

Vision Goal: Community Aesthetics, #1 – Identify and implement projects and activities that enhance aesthetic qualities valued by those who live and work in Tigard.

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#### ATTACHMENT LIST

Attachment #1: Revised Streetscape Contract Amendment #1

Attachment #2: Revised Exhibit 1 Hall Blvd./99W Gateway Design

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#### FISCAL NOTES

Cost of this amendment to the streetscape contract is \$7,000. The amendment would allow an additional \$3,000 for extra consultant time if necessary and subject to staff approval. Total amount would not exceed \$10,000 for this amendment.

Staff has available funds from the City's Gas Tax Fund for this additional work.



**CITY OF TIGARD, OREGON  
DESIGN SERVICES CONTRACT  
CONTRACT #0557**

**TIGARD DOWNTOWN COMPREHENSIVE STREETScape DESIGN PLAN - PHASE ONE**

**AMENDMENT #1**

The Design Services Agreement between the City of Tigard, a municipal corporation of the State of Oregon, hereinafter called City, and OTAK, Inc., hereinafter called the Firm, entered into on the 1st day of December, 2005, is hereby amended as follows:

**Exhibit 1 – Scope of Services – 2b Gateways / Intersection Treatments**

Provide concept designs for the intersection of Hall Boulevard and Highway 99 in accordance with Exhibit 1 (Hall Boulevard and 99W Gateway Design Scope of Services and Fees Estimate).

**Additional Fees per this Amendment: \$10,000**

**Revised Total Fee (not to exceed, per Section 3.A.1): \$185,000**

IN WITNESS WHEREOF, City has caused this Amendment to be executed by its duly authorized undersigned officer and Firm has executed this Amendment upon signature and date listed below.

**CITY OF TIGARD**

**OTAK, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Exhibit 1 Hall Blvd./99W Gateway Design

### Scope of Services and Fee Estimate

The intent of Amendment #1 is to suggest potential design improvements to the intersection that are more consistent with principles and objectives of the Tigard Downtown Improvement Plan which include:

- Hall Boulevard/99W intersection as a gateway for downtown
- Pedestrian and bike emphasis
- Potential to incorporate green street elements

The concepts will be modifications to the schematic intersection design at Hall Blvd. and 99W already developed by Washington County.

#### *Initial Meetings*

Meet with City staff and Washington County staff to discuss basic parameters for design, stormwater treatments and right-of-way impacts.

#### *Deliverables*

Attend same day meetings.

#### *Draft Concept Plans*

Initial sketches (hand-drawn or AutoCAD) overlaid on the existing schematic design. Sketches will indicate potential changes to curb lines, lane configurations, sidewalk locations and widths, and additional right-of-way or property impacts. Any gateway features behind the sidewalks will be generally sized and located and the general design character noted. It is assumed that some amount of AutoTURN verification and traffic engineering review will be required to evaluate the feasibility of initial concepts.

#### *Deliverables:*

Up to two concept design alternatives with clearly distinguishing features.

#### *Review Meeting*

Meet with City staff to review the initial concept sketches and agree on the direction for further design development.

#### *Deliverables:*

Attend meeting.

#### *Final Concept Plan*

Up to two final concept sketches in AutoCAD format provided the City can provide electronic based mapping and the existing schematic design in AutoCAD format. Otherwise, the sketches will

be hand-drawn and scanned into a digital format. Additional AutoTURN verification and traffic engineering review may be required to finalize the concepts.

*Deliverables:*

Final concept plans.

***Final Meeting***

Meet with City staff and other parties if necessary (Washington County and/or ODOT) to deliver and discuss the final concept sketches.

*Deliverables:*

Attend meeting.

**Estimated Fee for Labor and Materials: \$7,000**

Note: The fee estimate does not include planning level construction cost estimates. The draft scope of services and fee estimate can be amended to include construction cost estimates (exclusive of right-of-way acquisition costs) if requested by the City.

**Additional Time:**

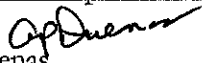


Prior to performing any additional work, OTAK, Inc. shall provide a written proposal to the City for review and approval. In the event that additional work is needed the following billing rates apply:

DKS (Peter Coffey) \$155  
OTAK Senior Civil Engineer (Pam Wiedemann)\$131  
OTAK Senior Urban Designer (Tom Litster) \$100



AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Proposed Formation of an LID (Local Improvement District) in the Tigard Triangle  
PREPARED BY: A.P. Duenas  DEPT HEAD OK  CITY MGR OK 

ISSUE BEFORE THE COUNCIL

Should the City Council approve a resolution establishing the proposed LID (Local Improvement District) as a project in the FY 2005-06 CIP (Capital Improvement Program), directing the preparation of a Preliminary Engineer's Report for the proposed LID for infrastructure improvements in the Tigard Triangle, and authorizing the establishment of the funding mechanism for the preparation of the report?

STAFF RECOMMENDATION

Staff recommends that City Council approve, by motion, the attached resolution establishing the proposed LID as a project in the FY 2005-06 CIP, directing the preparation of the Preliminary Engineer's Report for the proposed LID for infrastructure improvements in the Tigard Triangle, and authorizing the establishment of the funding mechanism for the preparation of the report.

INFORMATION SUMMARY

Properties in the Tigard Triangle are zoned MUE (Mixed-Use Employment) and C-G (General Commercial). Some of those properties are currently residential in nature, but are in the process of converting to commercial. The Tigard Triangle Plan established guiding principles (adopted into the Development Code as Chapter 18.620) that when implemented would develop the Triangle into a high-quality mixed-use employment area. The Tigard TSP (Transportation System Plan) adopted in 2002 identified the Tigard Triangle as an area where the street infrastructure needs to be significantly upgraded to meet those established standards. The formation of an LID (Local Improvement District) for construction of street improvements would address some of the deficiencies identified in the TSP by upgrading the streets within the LID boundary to meet the current standards.

Specht Development, Inc. has submitted a petition requesting the formation of an LID to improve certain streets within the Tigard Triangle. The proposed improvements include street and utility improvements to SW 68th Avenue, SW 69th Avenue, and SW 70th Avenue between SW Dartmouth Street and SW Baylor Street and SW Dartmouth Street and SW Clinton Street between SW 68th Avenue and SW 70th Avenue, all within the Tigard Triangle.

The basic concept of any LID is that the benefited properties pay for the improvements. The following is the LID formation process, in accordance with the City Municipal Code:

- Preliminary Evaluation Report
- Preliminary Engineer's Report

- Declaration of intention to form the district
- District formation
- Construction of Improvements
- Spreading of assessments by ordinance

A draft Preliminary Evaluation Report to determine feasibility of the proposed LID was submitted to the City Council at its February 21, 2006 meeting. The attached Preliminary Evaluation Report is a final version of that draft. Based on that initial evaluation, the proposed LID appears feasible. The attached report examines the various details in the proposed LID, determines that the formation of an LID for the proposed improvements is feasible, provides a tentative timeline for LID formation and construction of the improvements, and recommends that Council authorize staff to proceed with preparation of a Preliminary Engineer's Report. The Preliminary Engineer's Report would examine the proposed LID in much greater detail and would include preparation of engineering plans (up to 60% complete) in sufficient detail to provide reliable cost estimates and to meet requirements for various permit applications. Specht Development, Inc. has agreed to deposit, in advance of any work, the amount needed for preparation of that report (Attachment 1.3). All costs incurred in the preparation of the report would be included in the total LID cost if the LID is formed. Specht Development, Inc. would be reimbursed the amount deposited once the LID is formed.

The attached resolution establishes the proposed LID as a project in the FY 2005-06 CIP, directs the Engineering staff to proceed with the preparation of the Preliminary Engineer's Report, and authorizes the establishment of the funding mechanism (for this fiscal year) in the amount of \$70,000.00 to cover the anticipated expenses during the remainder of FY 2005-06. This resolution further authorizes a contingency transfer from the Gas Tax Fund as the funding source for the preparation of the report.

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#### OTHER ALTERNATIVES CONSIDERED

None. If Council does not wish to proceed, all activities regarding the proposed LID will be terminated.

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#### COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

By constructing improvements to upgrade the street infrastructure in the Tigard Triangle, the LID would address the findings of the 2002 Tigard Transportation System Plan that identified the Tigard Triangle as an area where future transportation problems appear significant.

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#### ATTACHMENT LIST

Attachment 1:	Proposed Resolution directing the Engineering staff to proceed with the Preliminary Engineer's Report.
Attachment 1.1:	Preliminary Evaluation Report
Attachment 1.2:	Petition for Proposed LID in the Tigard Triangle area. Tentative Schedule for Specht Triangle LID Tigard Triangle Portal on SW 72 <sup>nd</sup> Avenue Tax Map 1S 1 36DD
Attachment 1.3:	Letter from Specht Development, Inc.

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## FISCAL NOTES

The proposed LID is not included as a project in the FY 2005-06 CIP. Hence, there are no funds currently allocated for the preparation of the Preliminary Engineer's Report. Funding will have to be provided for the LID formation process to begin. If Council directs staff to begin the LID formation process, Specht Development, Inc. will have to deposit, in advance, the amount needed for preparing the Preliminary Engineer's Report with the understanding that the City would include the cost of preparing the report in the total LID cost, if and when the City establishes the District. The total estimated cost of the LID is approximately \$1,589,500.00. It should be noted that this total LID cost is a preliminary estimate that may increase as the Preliminary Engineer's Report examines the project in greater detail. The estimated cost for the preparation of the Preliminary Engineer's Report is \$125,000.00. A \$70,000.00 contingency transfer from the FY 2005-06 Gas Tax Fund would be necessary to fund the preparation of the Preliminary Engineer's Report. The amount of \$70,000.00 would provide sufficient funding during the remainder of FY 2005-06. Funding for the continuation of the work in FY 2006-07 would be budgeted in the FY 2006-07 CIP. The cost for preparation of the Preliminary Engineer's Report will be included in the LID costs, if the LID is formed. The amount deposited by Specht Development, Inc. would be refunded to them after formation of the district. If the district is not formed, all actual costs in the preparation of the report will be retained from the Specht Development, Inc. deposit and any remaining balance will be refunded to the firm.

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CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 06-\_\_\_\_\_

A RESOLUTION DIRECTING THE ENGINEERING STAFF TO ESTABLISH A PROPOSED LOCAL IMPROVEMENT DISTRICT (LID) AS A PROJECT IN THE FY 2005-06 CIP (CAPITAL IMPROVEMENT PROGRAM), DIRECTING THE PREPARATION OF A PRELIMINARY ENGINEER'S REPORT FOR THE PROPOSED LID IN THE TIGARD TRIANGLE AND AUTHORIZING THE ESTABLISHMENT OF A FUNDING MECHANISM FOR THE PREPARATION OF THE REPORT.

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WHEREAS, properties in the Tigard Triangle are zoned MUE (Mixed-Use Employment) and C-G (General Commercial); and

WHEREAS, some of those properties are currently residential in nature, but are in the process of converting to commercial; and

WHEREAS, the Tigard Triangle Plan established guiding principles (adopted into the Development Code as Chapter 18.620) that when implemented would develop the Triangle into a high-quality mixed-use employment area; and

WHEREAS, the Tigard TSP (Transportation System Plan), adopted in 2002, identified the Tigard Triangle as an area where the street infrastructure needs to be significantly upgraded to meet those established standards. ; and

WHEREAS, recent efforts to enhance this sparsely developed area have included the following LID's:

Year    Local Improvement District

1984    68th Avenue Sanitary Sewer Local Improvement District (LID 42)

1993    Combined Dartmouth Street LID and C.I.P. Phase 2 Project

1998    69th Avenue Local Improvement District (Specht Development, Inc.); and

WHEREAS, the formation of an LID (Local Improvement District) for construction of street improvements would address some of the deficiencies identified in the TSP by upgrading the streets within the LID boundary to meet the current standards; and

WHEREAS, Specht Development, Inc. has submitted a petition requesting the formation of an LID to improve certain streets within the Tigard Triangle; and

WHEREAS, the proposed LID boundary within the Tigard Triangle is defined as SW 68th Avenue, SW 69th Avenue, and SW 70th Avenue between SW Dartmouth Street and SW Baylor Street and SW Dartmouth Street and SW Clinton Street between SW 68th Avenue and SW 70th Avenue; and

WHEREAS, the Engineering staff prepared a Preliminary Evaluation Report (attached as Attachment 1.2), which was submitted in draft form to the City Council for discussion and direction during its February 21, 2006 meeting; and

WHEREAS, the Preliminary Evaluation Report determines that the proposed LID appears feasible and recommends that the City Council take the next step in the LID formation process by authorizing the preparation of a Preliminary Engineer's Report; and

WHEREAS, the proposed LID is not listed as a project in the FY 2005-06 Capital Improvement Program (CIP) and there is currently no existing budget resource for the cost of preparing the Preliminary Engineer's Report; and

WHEREAS, Specht Development, Inc. has agreed to deposit, in advance of any work, the amount needed for preparation of the Preliminary Engineer's Report with the understanding that the City include the cost of preparing the report in the total cost of the LID, if and when the City establishes the District; and

WHEREAS, City Council discussed the proposed LID and indicated that the LID boundary and improvements to be constructed by the LID are satisfactory as submitted; and

WHEREAS, the City Council has directed staff to prepare a resolution authorizing preparation of a Preliminary Engineer's Report and submit that resolution for adoption at a City Council business meeting.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The proposed LID in the Tigard Triangle is hereby added to the list of projects for the FY 2005-06 Capital Improvement Program.

SECTION 2: The Engineering staff is directed to proceed with preparation of a Preliminary Engineer's Report, which includes "60% complete" engineering plans in sufficient detail to provide reliable cost estimates and to meet requirements for various permit applications.

SECTION 3: The Preliminary Engineer's Report should include the scope of work, location of the proposed improvements, financial information, the proposed district boundaries, estimated costs, proposed assessment methods, and other information that may be relevant to the feasibility of the proposed improvements and district. The report should recommend approval, approval with conditions, or denial.

SECTION 4: The City staff is directed to proceed with the establishment of the funding mechanism in the amount of \$70,000 to cover the anticipated expenses during the remainder of FY 2005-06 for preparation of the Preliminary Engineer's Report. A contingency transfer from the Gas Tax Fund is authorized as the funding source for the purpose of preparing the report. Any budget adjustments requiring Council action and necessary for the establishment of the project funding shall be brought to Council for appropriate action.

SECTION 5: Before work begins on the preparation of the Preliminary Engineer's Report, Specht Development, Inc. will deposit an amount to cover the engineering contract and administrative costs for the preparation of that report. If the City establishes the LID, the cost of preparing the report shall be included in the total cost of the LID. In this case, Specht Development, Inc. will be refunded the amount deposited. If the City does not establish the LID, Specht Development, Inc. will be given the remaining balance of their deposit, less all actual costs incurred in preparing the report.

SECTION 6: All costs incurred after the date of this resolution to prepare the Preliminary Engineer's Report and form the district shall be included as part of the LID costs and shall be reimbursed to the City if the LID is formed and the improvements are constructed.

SECTION 7: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2006.

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Mayor - City of Tigard

ATTEST:

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City Recorder - City of Tigard

## Preliminary Evaluation Report

### Formation of a Local Improvement District in the Tigard Triangle

#### Background

It is proposed to develop a Local Improvement District (LID) including street and utility improvements to SW 68<sup>th</sup> Avenue, SW 69<sup>th</sup> Avenue, SW 70<sup>th</sup> Avenue, SW Dartmouth Street and SW Clinton Street, all within the Tigard Triangle, between SW Dartmouth Street and SW Baylor Street, and between SW 68<sup>th</sup> Avenue and SW 70<sup>th</sup> Avenue (Attachment 1.2; p. 8). The area consists of a transforming balance of residential to commercial zoning (Attachment 1.2; p. 9). Recent efforts to enhance this sparsely developed area have included the following LID's: (Note: In 1998, Specht Development, Inc. initiated a successful LID responsible for improvements to SW 69<sup>th</sup> Avenue south of Dartmouth Street)

<u>Year</u>	<u>Local Improvement District</u>
1984	68 <sup>th</sup> Avenue Sanitary Sewer Local Improvement District (LID 42)
1993	Combined Dartmouth Street LID and C.I.P. Phase 2 Project
1998	69 <sup>th</sup> Avenue Local Improvement District (Specht Development, Inc): 2,750 lineal feet of partial/full-width street improvements

Specht Development, Inc. is the owner or contract purchaser of fifteen (15) of the twenty five (25) parcels within the proposed LID boundary (Attachment 1.2; p. 11). These parcels comprise 59% of the land area (Attachment 1.2; p. 12) and 64% of the street frontage within the assessment district (Attachment 1.2; p. 13). The Tigard Municipal Code (TMC) 13.04.020 specifies that an LID may be initiated by written petition of "property owners owning at least fifty percent of the property benefited by the local improvement" (Attachment 1.2; pp. 2-4 & 14).

#### Current Proposal

The proposed Local Improvement District in the Tigard Triangle will be for the express purpose of improving the following streets to partial or full standards as required by the City of Tigard (Attachment 1.2; p. 6)

- SW 68<sup>th</sup> Avenue (between SW Dartmouth Street and SW Baylor Street)
- SW 69<sup>th</sup> Avenue (between SW Dartmouth Street and SW Baylor Street)
- SW 70<sup>th</sup> Avenue (between SW Dartmouth Street and SW Baylor Street)
- SW Dartmouth Street (between SW 68<sup>th</sup> Avenue and SW 69<sup>th</sup> Avenue)
- SW Clinton Street (between SW 68<sup>th</sup> Avenue and SW 69<sup>th</sup> Avenue)

The improvements to the aforementioned streets would include:

- |                    |  |
|--------------------|--|
| • Asphalt Pavement | • Water Improvements                     |
| • Curb and Gutter  | • Storm Drainage                         |
| • Sidewalks        | • Utility Undergrounding                 |
| • Street Trees     | • Right-of-Way Acquisition, if necessary |
| • Street Lighting  | • Tigard Triangle Portal Enhancement(s)  |
| • Street Signs     |  |
| • Sanitary Sewer   |  |

The LID would provide highly visible enhancements to the Tigard Triangle area, particularly SW Dartmouth Street and SW 68<sup>th</sup> Avenue. Each of these streets, within the proposed district boundary, is at the Dartmouth St terminus of the previous LID's. Consequently, an obvious visual difference is noticed on the north side of SW Dartmouth Street between the I-5 On/Off Ramps and SW 69<sup>th</sup> Avenue. It should also be noted that the I-5 Ramp intersection is a designated Tigard Triangle Portal. Therefore, consideration would be given to enhancements associated with that distinction such as the monument on SW 72<sup>nd</sup> Avenue at the northbound 217 on/off-ramp intersection (Attachment 1.2; p. 17).

### Cost Estimate

Without the benefit of greater detail for the scope of work, we submit the following estimate for the total cost of the currently proposed LID. According to the Preliminary Engineer's Report on record, the total LID cost for the 1998 SW 69<sup>th</sup> Avenue LID project was \$1,288,005.00. After evaluating that cost per lineal foot of street improvements, our estimate will use a cost of \$500 for full width and \$337 for partial width street improvements. These unit costs assume a similar scope of work. For the purpose of a preliminary evaluation, we will estimate the total LID cost based on the following values (Note: These costs do not reflect cost of living increases and general inflation).

<u>Work Item Description</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Item Cost</u>
Partial Street Improvements:	2,015 lineal feet	\$337/LF	\$679,500.00
Full Street Improvements:	1,220 lineal feet	\$500/LF	<u>\$610,000.00</u>
Sub Total:			\$1,289,500.00

<u>Ancillary Costs</u>	<u>Portion of Sub Total</u>	<u>Item Cost</u>
City of Tigard		
Administrative/Construction Services:	8%	\$100,000.00
Preliminary Engineer's Report and		
60% Complete Construction Drawings	10%	\$125,000.00
Completion of Final Construction Drawings	6%	<u>\$75,000.00</u>
Total LID Cost:		\$1,589,500.00

The 25 parcels within the proposed LID boundary combine for a total of 297,525 square feet (Attachment 1.2; p. 14). When consideration is given to the general feasibility of a proposed LID, a ratio of 3:1 of land value (\$15/square foot) to the total cost of the LID is favorable. In this case, the ratio is approximately 2.81:1.

$$297,525 \text{ SF} \times \$15/\text{SF} = \$4,462,875.00$$

$$\text{Estimated LID Cost} = \$1,589,500.00$$

### The Local Improvement District (LID) formation process.

The LID process has several steps in it. The basic concept of any LID is that the benefited properties pay for the improvements. The following is the LID process, in accordance with our City Municipal Code:

- Preliminary Evaluation Report
- Preliminary Engineer's Report
- Declaration of intention to form the district



- District formation
- Construction of Improvements
- Spreading of assessments by ordinance

We are currently preparing the Preliminary Evaluation Report, which should provide sufficient information for Council to make a decision on whether or not to proceed with directing staff to prepare a Preliminary Engineer's Report for the purpose of evaluating the feasibility of forming the LID. The Preliminary Engineer's Report will also have the proposed methodology for distributing the costs, the proposed LID Boundary, and the benefited properties that would be included in the LID.

An LID could be formed through Council initiative, or at the request of the property owners that want the improvements. For this particular LID, Specht Development, Inc. has submitted a formal "Petition for and Consent to Create a Local Improvement District." Specht Development, Inc. has agreed to deposit, in advance, the cost of preparing the Preliminary Engineer's Report with the understanding that the City include the cost of preparing the report in the total cost of the LID, if and when the City establishes the District. The total cost of the LID would also include the City's contribution for the design and construction management, plus the costs to establish the LID and construct the improvements. The LID formation is contingent upon 50% of the properties by area approving the LID formation. In this case, Specht Development, Inc. is the owner or contract purchaser of fifteen (15) of the twenty five (25) parcels within the proposed LID boundary. These parcels comprise 59% of the land area. The Tigard Municipal Code (TMC) 13.04.020 specifies that an LID may be initiated by written petition of "property owners owning at least fifty percent of the property benefited by the local improvement" Council, or the property owners, could withdraw at anytime if the costs prove to be exorbitant, or if construction of the improvements does not appear feasible. The property owners could stop the LID formation if two-thirds of them (by area) remonstrate against the LID formation. Since there is one major property owner for this LID, if Specht Development, Inc. decides it does not want to proceed, we would terminate the LID process.

The City would provide the interim financing to design and construct the project, and then issue bonds after the project is completed and the total costs are known. The benefited property owners would be assessed their share of the LID costs with repayment over a 10-year period, or longer, or all at once, if they choose.

If Council moves to proceed with establishing the Local Improvement District in the Tigard Triangle, the following estimated time line can be expected. It should be noted that the attached schedule does not include the necessary time to select a consultant to prepare the Preliminary Engineer's Report. (Attachment 1.2; p. 15-16).

### Issues To Be Resolved

Some of the major issues that need to be resolved for the successful implementation of the improvements in the proposed LID are:

- Acquisition of Right of Way along SW 70<sup>th</sup> Avenue, if necessary.
- Connection to existing improvements and infrastructure. (Particularly, Storm and Sanitary Sewer).

## Recommendations

The LID appears feasible. To comprehensively address the roadway improvement deficiencies in the Tigard Triangle, staff recommends the following:

- That Council direct staff to proceed with the next step in the LID process. This would require a resolution directing staff to proceed with the preparation of a Preliminary Engineer's Report. This report would examine the overall scope of work and associated cost assessment per tax lot owner within the LID boundary. Specht Development, Inc. has agreed to deposit, in advance, the cost of preparing the Preliminary Engineer's Report with the understanding that the City include the cost of preparing the report in the LID, if and when the City establishes the District.



January 25, 2006

Gus Duenas, City Engineer  
Engineering Department  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, Oregon 97223

**RE: Proposed Local Improvement District in Tigard Triangle area**

Dear Mr. Duenas:

On behalf of Specht Development, Inc., I am submitting ten (10) copies of a petition requesting the City Council to form a Local Improvement District (LID) and make public street and utility improvements to certain streets within the Tigard Triangle area. Specht Development, Inc. is the owner or contract purchaser of 15 out of the 25 parcels within the proposed LID boundary; these parcels represent 59% of the land area and 64% of the street frontage within the proposed assessment district. This is significantly more than the minimum required by Tigard Municipal Code (TMC) 13.04.020, which requires "property owners owning at least fifty percent of the property benefited by the local improvement" to initiate a Local Improvement District by written petition.

The proposed LID would include street and utility improvements to SW 68<sup>th</sup> Avenue, SW 69<sup>th</sup> Avenue, SW 70<sup>th</sup> Avenue, SW Dartmouth Street and SW Clinton Street, all within the "Tigard Triangle", between SW Dartmouth Street and SW Baylor Street, and between SW 68<sup>th</sup> Avenue and SW 70<sup>th</sup> Avenue. These streets are currently substandard; or, in the case of SW 70<sup>th</sup> Street, non-existent. This LID would make improvements similar to the improvements made to SW 69<sup>th</sup> Avenue south of Dartmouth Street. As you know, Specht Development, Inc. initiated a successful LID for those improvements in 1998.

We respectfully request that your office prepare a Preliminary Evaluation Report for the City Council's consideration, and schedule this matter before the City Council at the earliest possible date. If the City Council adopts a Resolution directing that a Preliminary Engineer's Report be prepared, Specht Development, Inc. will pay in advance the cost of preparing that report, in accordance with TMC 13.04.030, with the understanding that the City will include the cost of preparing the report in the LID, if and when the City establishes the District.

Thank you, Gus.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Murphy".

Ed Murphy  
Comprehensive Planning Manager

Project File # 1017.001

20055 NW Tanastown Drive  
Hillsboro, OR 97124  
P 503.656.4242  
F 503.645.5500  
E hillsboro@lidesign.com  
www.lidesign.com

Hillsboro, OR  
Hillsboro, OR  
Vancouver, WA  
Clatskanie, OR  
Cedar Grove, OR  
Rockton, IL  
Clement, IL

## **PETITION FOR AND CONSENT TO CREATE A LOCAL IMPROVEMENT DISTRICT**

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**THE HONORABLE MAYOR AND CITY COUNCIL  
City of Tigard  
County of Washington  
State of Oregon**

In the matter of the improvement of lands described as:

*Street and utility improvements to SW 68<sup>th</sup> Avenue, SW 69<sup>th</sup> Avenue, SW 70<sup>th</sup> Avenue, SW Dartmouth Street and SW Clinton Street, all within the "Tigard Triangle" between SW Dartmouth Street and SW Baylor Street, and between SW 68<sup>th</sup> Avenue and SW 70<sup>th</sup> Avenue.*

We, the undersigned petitioners, hereby request that the City of Tigard investigate the feasibility of forming a Local Improvement District (LID) and draft a Preliminary Evaluation Report for the City Council's consideration. The evaluation would review the feasibility and estimated costs of making public improvements to these streets through the creation of an assessment district. If the Preliminary Evaluation Report determines that the LID is feasible, we request that the City Council direct the engineering staff to proceed to the next step and prepare a Preliminary Engineering Report.

The LID would be for the express purpose of:

Improving the following streets to partial or full city street standards, including streets, curbs, gutters, sidewalks, street trees, street lights and signage; sanitary sewer; water, including fire hydrants; storm drainage facilities; undergrounding of overhead utilities; acquisition of additional right-of-way or easements acquisition, if necessary; street and utility engineering design and related professional service:

- SW 68<sup>th</sup> Avenue, between SW Dartmouth Street and SW Baylor Street;
- SW 69<sup>th</sup> Avenue between SW Dartmouth Street and SW Baylor Street;
- SW 70<sup>th</sup> Avenue between SW Dartmouth St and SW Baylor Street;
- SW Dartmouth Street between SW 68<sup>th</sup> and SW 69<sup>th</sup> Avenues;
- SW Clinton Street between SW 68<sup>th</sup> and SW 69<sup>th</sup> Avenues.

The area hereby to be improved by the creation of an assessment district comprises approximately 10 acres, counting existing right-of-ways. The area and the proposed LID are more specifically explained in the Exhibits attached to this petition, which are all by reference herein made a part of this petition, and which include the following:

- Exhibit 'A' is a list of the properties to be included in the LID;
- Exhibit 'B' is a narrative description of the proposed improvements;
- Exhibit 'C' includes maps (Figures 1-6) which illustrate the general location, the proposed boundary, the property ownerships, and the parcel size and parcel frontage of each parcel within the LID;

- Exhibit 'D' provides detail on the area and frontage calculations, including the percentage of the area and frontage which is owned by Specht Development, Inc., which is summarized on Figures 5 and 6 of Exhibit 'C'.

We hereby declare that we, the undersigned petitioners:

- (1) Are in fact the owner or the contract purchaser of the indicated properties;
- (2) Represent at least fifty percent (50%) of the property benefited by the proposed local improvement district;
- (3) Understand that the cost of these improvements would be borne by the benefited property owners if a local improvement district were formed;
- (4) State that by signing this petition we are only acknowledging an interest in having a preliminary engineering report completed, and are not committed to supporting any local improvement district that may be proposed as a result of the City's evaluation and report.

WHEREFORE, petitioners request that said preliminary investigation be accomplished, and a Preliminary Evaluation Report be delivered to the City Council regarding the feasibility of creating an assessment district, and further that, if the LID appears to be feasible, the City Council of the City of Tigard, Oregon, direct staff to prepare a Preliminary Engineering Report and expedite the study as much as possible.

SIGNATURE	COMPANY	ADDRESS	TAX LOT # (WCTM 15136DD)
<i>Todd R. Shaffer</i>	SPECHT DEVELOPMENT, INC.	15400 SW MILLIKEN PORTLAND, OR 97061	2100
<i>Todd R. Shaffer</i>	"	"	2200
<i>Todd R. Shaffer</i>	"	"	2300
<i>Todd R. Shaffer</i>	"	"	2500
<i>Todd R. Shaffer</i>	"	"	2900
<i>Todd R. Shaffer</i>	"	"	3000
<i>Todd R. Shaffer</i>	"	"	3001
<i>Todd R. Shaffer</i>	"	"	3100
<i>Todd R. Shaffer</i>	"	"	6100
<i>Todd R. Shaffer</i>	"	"	6200
<i>Todd R. Shaffer</i>	"	"	6300
<i>Todd R. Shaffer</i>	"	"	6500
<i>Todd R. Shaffer</i>	"	"	6600

Todd R. Sheffer	SPECTR DEVELOPMENT, INC.	15400 SW MILLIKEN BERKELEY CA 94706	6700
Todd R. Sheffer	"	"	6800

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**EXHIBIT 'A'****PROPERTIES INCLUDED WITHIN THE PROPOSED  
LOCAL IMPROVEMENT DISTRICT**

The following tax lots, all on Washington County Tax Assessor's Map 1S136DD:

<u>Tax Lot #</u>	<u>Owner or contract purchaser</u>
2100	Pollock, Donald E & Julia Gall / Specht Development, Inc.
2200	Pollock, Donald E / Specht Development, Inc.
2300	Carpenter, Richard L / Specht Development, Inc.
2500	Dickey, Velda A / Specht Development, Inc.
2900	Specht Development, Inc.
3000	Specht Development, Inc.
3001	Specht Development, Inc.
3100	Specht Development, Inc.
6100	Specht Development, Inc.
6200	Specht Development, Inc.
6300	Specht Development, Inc.
6500	Specht Development, Inc.
6600	Specht Development, Inc.
6700	Specht Development, Inc.
6800	Specht Development, Inc.
1900	John Carl Coon & Mary G. Olsen, Trustee
2000	Paul B. Wagar Jr. & Kaneko T TRS
2400	Sternberg Family Limited Partner
2700	Lavida E. Miller
2800	Glenn L. and Sharon L. Moore
3290	Judy Lorraine Strojny & Diane Louise Baldwin
6900	J. T. Jr. and Theresa A. Roth
7001	Jacob T. Jr. and Theresa A. Roth
7300	Kenneth and Marilyn Rosenfeld
7601	Marzie Salarie

## EXHIBIT 'B'

**NARRATIVE DESCRIPTION OF THE PROPOSED PROJECT**

The proposed project would improve the public streets and utilities to partial or full city standards. Specifically, the project would improve:

- Partial street improvements to SW 68<sup>th</sup> Avenue, between SW Dartmouth Street and SW Baylor Street, along the west side of the street only (Pacific NW Properties is improving the east side of the street as a condition of development), and not including tax lot 2600 (1S136DD), which is already developed;
- Full street and utility improvements to SW 69<sup>th</sup> Avenue between SW Dartmouth Street and SW Baylor Street, along both sides (except that portion between SW Dartmouth Street and SW Clinton Street along the west side of SW 69<sup>th</sup> Avenue, which is being developed by Pacific NW Properties as a condition of development);
- Partial street improvements to SW 70<sup>th</sup> Avenue between SW Dartmouth St and SW Baylor Street, along the east side of the street only, and not including tax lot 7500 (1S136DD), which is already being developed by Pacific NW Properties as a condition of development;
- Partial Street improvements to SW Dartmouth Street between SW 69<sup>th</sup> and SW 70<sup>th</sup> Avenues, on the north side of SW Dartmouth Street only;
- Full street and utility improvements to SW Clinton Street between SW 68<sup>th</sup> and SW 70<sup>th</sup> Avenues.

The street standards assumed in this proposed local improvement district are as follows:

- SW 68<sup>th</sup> Avenue would be 44-feet wide in a 70-foot wide right-of-way;
- SW 69<sup>th</sup> Avenue would be 36-feet wide in a 60-foot wide right-of-way;
- SW 70<sup>th</sup> Avenue would be a "1/2" street improvement, i.e., 18feet wide in a 30-foot wide right-of-way, with curbs, sidewalks, landscape strip and street trees on the east side only;
- SW Dartmouth Avenue would be 56-feet wide in a 94-foot wide right-of-way.

There appears to be enough right-of-way available for the proposed improvements, therefore it should not be necessary for the City to acquire additional right-of-way or easements. However, if there is a need to acquire for additional right-of-way or public easements, the costs of such acquisitions would be added to the LID.

In addition to any right-of-way acquisition and construction costs, other costs will be folded into the local improvement district, including but not limited to city staff and consultant time and materials for survey, engineering design, project administration, legal services and financing costs.



**EXHIBIT 'C'**

**SUPPORTING ILLUSTRATIONS**

The following figures illustrate the percentage of the property area and property frontage owned by Specht Development, Inc.

Figure 1 – This figure illustrates the location of the proposed Local Improvement District, which is within the "Tigard Triangle", generally north of Dartmouth Street, between I-5 and SW 72<sup>nd</sup> Avenue;

Figure 2 – This figure is an aerial photograph which shows the proposed LID boundary and the parcels that would be included in the assessment district;

Figure 3 – This figure shows the ownerships of the properties in and adjacent to the proposed LID boundary;

Figure 4 - This figure illustrates the proposed local improvement district boundary, and the areas where street and utility improvements would be made. All public improvements made as part of the LID project would be within this boundary;

Figure 5 - This figure shows the total land area, in square footage, of the parcels within the proposed LID, and the percentage of the square footage owned by Specht Development, Inc.

Figure 6 – This figure shows the total street frontage of the parcels within the proposed LID, and the percentage of the street frontage of parcels owned by Specht Development, Inc.

FIGURE 1

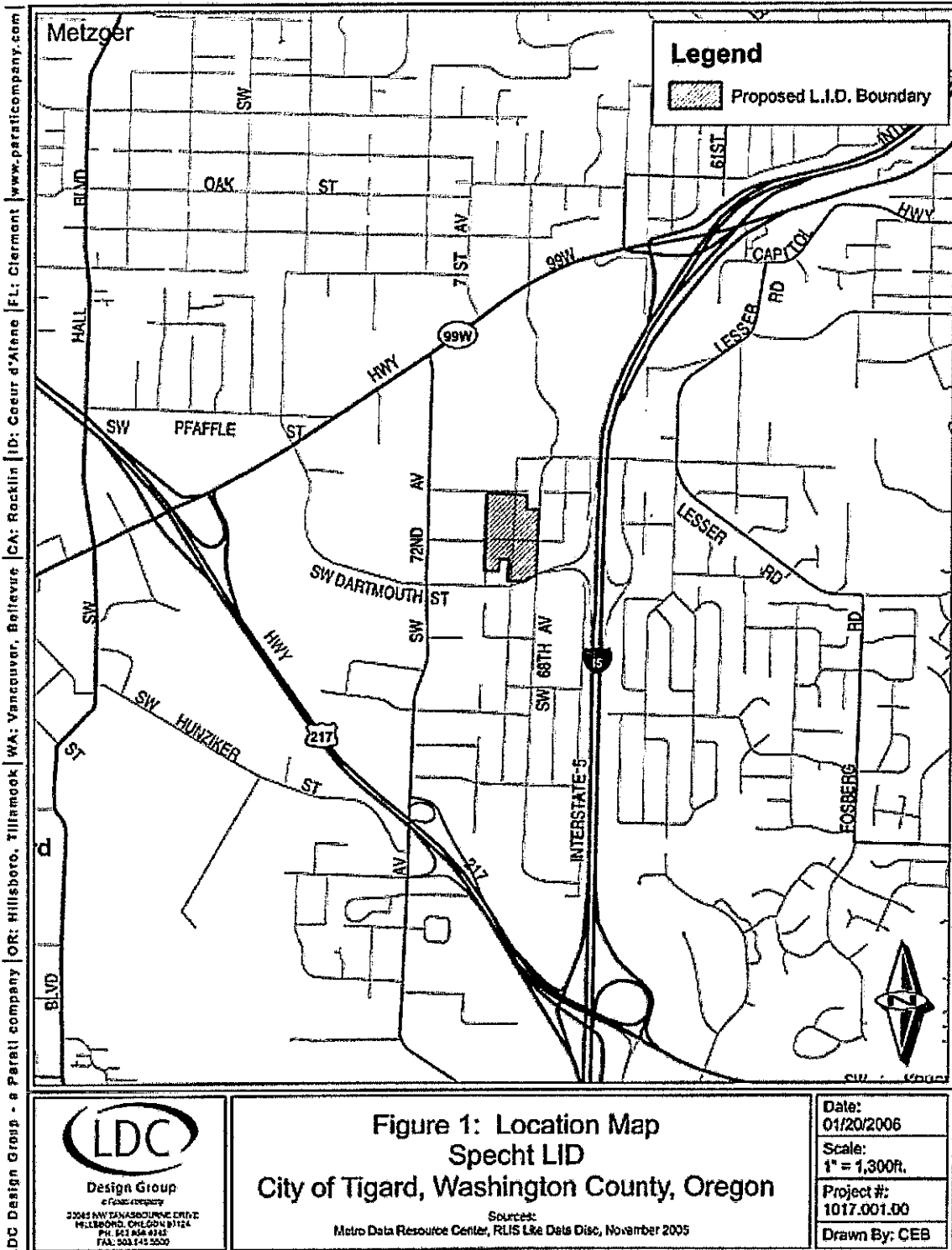
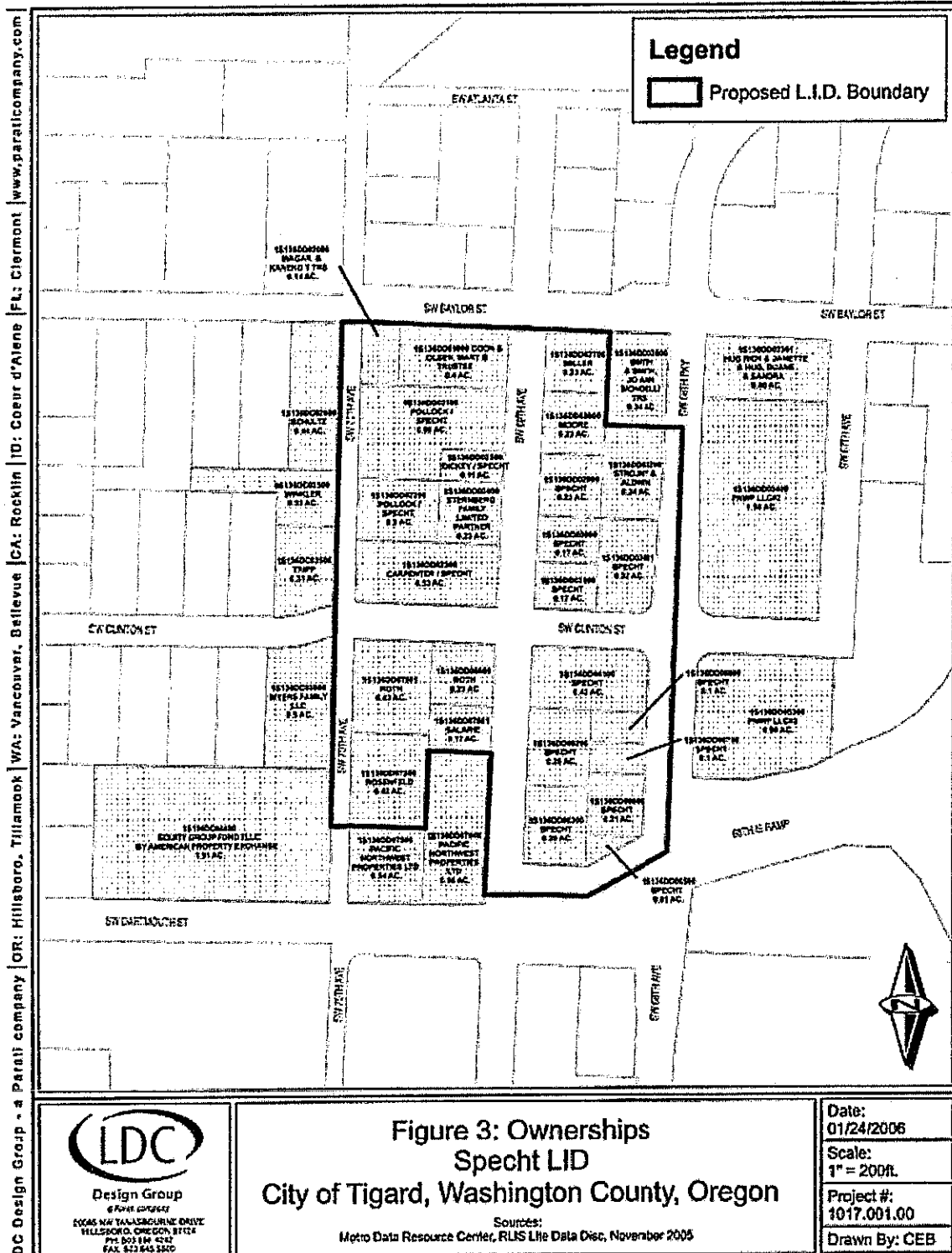


FIGURE 2



FIGURE 3



**LEGEND**

- District Boundary
- Improvement Areas

**SW BAYLOR ST**

**SW 70TH AVE**

**SW 69TH AVE**

**SW CLINTON ST**

**SW 68TH AVE**

**SW DARTMOUTH ST**

**15136DD 2000 WAGARI KANEKO**

**15136DD 1900 COONHOLSEN**

**15136DD 2700 MILLER**

**15136DD 2100 POLLOCK / SPECHT**

**15136DD 2800 MOORE**

**15136DD 2900 DICKEY / SPECHT**

**15136DD 2900 SPECHT**

**15136DD 3200 STROJNY / BALDWIN**

**15136DD 2400 STERNBERG FAMILY LIMITED PARTNER**

**15136DD 2200 POLLOCK / SPECHT**

**15136DD 3000 SPECHT**

**15136DD 3001 SPECHT**

**15136DD 2300 CARPENTER / SPECHT**

**15136DD 3100 SPECHT**

**15136DD 7001 ROTH**

**15136DD 6900 ROTH**

**15136DD 7801 SALARIE**

**15136DD 7300 ROSENFELD**

**15136DD 6200 SPECHT**

**15136DD 6600 SPECHT**

**15136DD 6700 SPECHT**

**15136DD 6800 SPECHT**

**15136DD 6300 SPECHT**

**15136DD 6500 SPECHT**

**NORTH**

**Figure 4: Improvement District Specht LID**

**City of Tigard, Washington County, Oregon**

**Source:**

**Metro Data Resource Center, RLIS LRS Data Disc, November 2005**

**Date:** 01/24/2006

**Scale:** 1"=150ft.

**Project #:** 1017.001.00

**Drawn By:** CEB

**LEGEND**

	Properties Owned By Others	= 123,358sq.ft. or 41%
	Properties Owned By Specht	= 174,167sq.ft. or 59%
	<b>Total</b>	<b>= 297,525sq.ft. (100%)</b>

**SW BAYLOR ST**

**SW 70TH AVE**

**SW 69TH AVE**

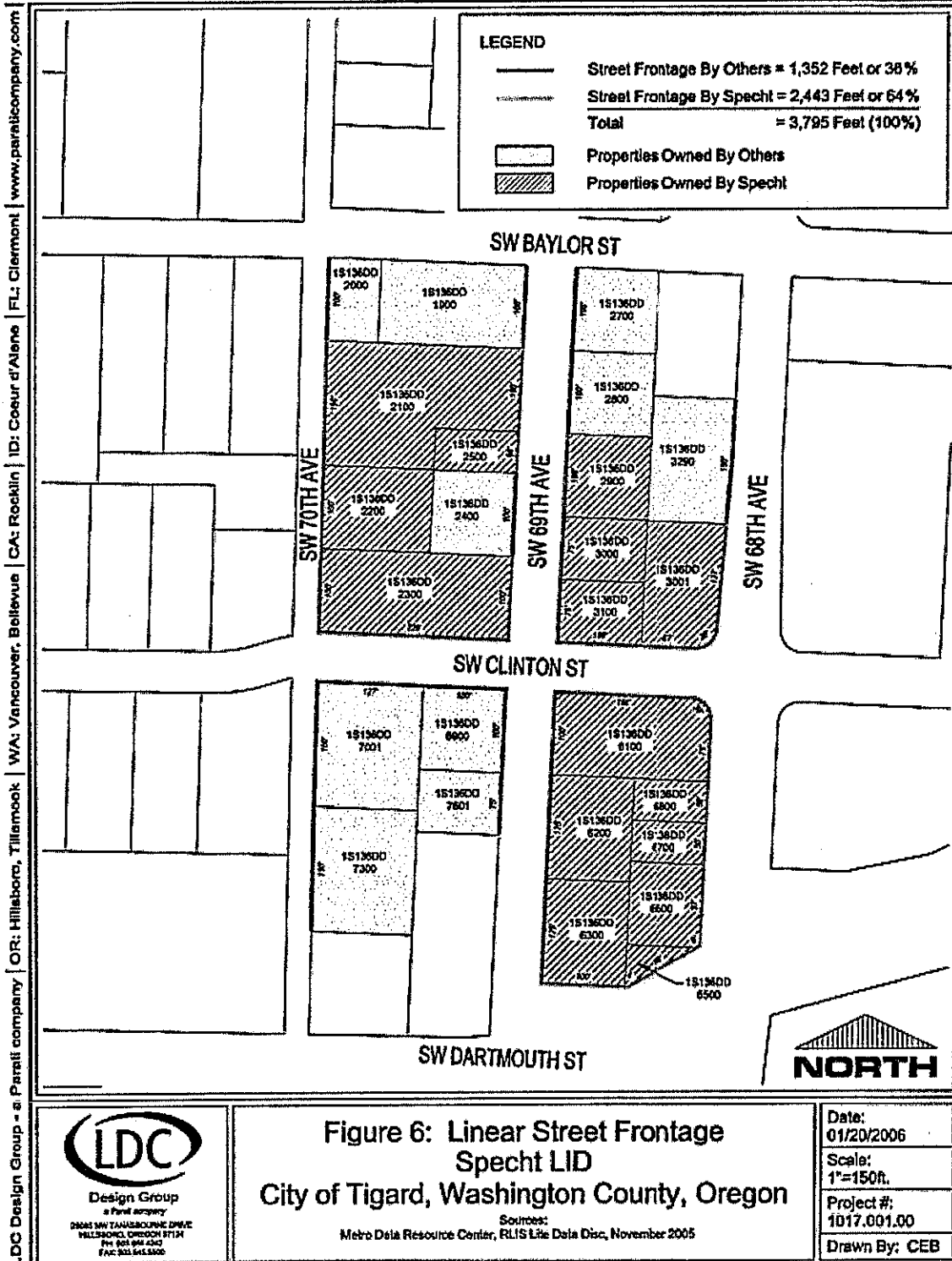
**SW 68TH AVE**

**SW CLINTON ST**

**SW DARTMOUTH ST**

**NORTH**

FIGURE 6



**2006 Tigard Triangle LID Initiation Support Chart**

LID Support						68th, 69th, 70th and Clinton			
Owner Name	Purchased by Specht?	Tax Lot #	Sq. Footage	Total Frontage (ft)	In LID	Frontage (ft)	Sq. Footage		
<b>TAX Map 1S136DD</b>									
Pollock / Specht	Y	2100	30,073	250	x	250	30,073		
Pollock / Specht	Y	2200	13,142	100	x	100	13,142		
Carpenter / Specht	Y	2300	22,951	429	x	429	22,951		
Dickey / Specht	Y	2500	5,000	50	x	50	5,000		
Specht	Y	2900	10,000	100	x	100	10,000		
Specht	Y	3000	7,500	75	x	75	7,500		
Specht	Y	3001	13,914	232	x	232	13,914		
Specht	Y	3100	7,500	175	x	175	7,500		
Specht	Y	6100	18,865	380	x	380	18,865		
Specht	Y	6200	12,500	125	x	125	12,500		
Specht	Y	6300	12,500	225	x	225	12,500		
Specht	Y	6500	2,234	99	x	99	2,234		
Specht	Y	6600	8,988	103	x	103	8,988		
Specht	Y	6700	4,500	50	x	50	4,500		
Specht	Y	6800	4,500	50	x	50	4,500		
<b>Subtotal, Specht</b>			<b>174,167</b>	<b>2443</b>		<b>2,443</b>	<b>174,167</b>		
Vagan/Kaneko	N	2000	6,121	162	x	100	6,121	Excludes frontage on Baylor	
Coon/Olsen	N	1900	17,500	275	x	100	17,500	Excludes frontage on Baylor	
Stenberg	N	2400	10,000	100	x	100	10,000		
Miller	N	2700	10,000	200	x	200	10,000	Excludes frontage on Baylor	
Moore	N	2800	10,000	100	x	100	10,000		
Strojny/Baldwin	N	3290	14,856	150	x	150	14,856		
Roth	N	7001	18,906	277	x	277	18,906		
Roth	N	6900	10,000	200	x	200	10,000		
Rosenfeld	N	7300	18,475	150	x	150	18,475		
Salarie	N	7601	7,500	75	x	75	7,500		
<b>Subtotal, Others</b>						<b>1,452</b>	<b>123,358</b>		
<b>Total</b>						<b>3,895</b>	<b>297,525</b>		
<b>% controlled by Specht</b>						<b>63%</b>	<b>59%</b>		

EXHIBIT 'D'



**Specht Triangle LID  
Tentative Schedule  
12/01/05**

**PHASE I: INITIATE LID**

- |   |                  |
|---|------------------|
| 1. Develop tentative LID boundary       | 11/25/05         |
| 2. Review with City staff               | 11/29/05         |
| 3. Meet with individual property owners | 12/01 – 12/09/05 |
| 4. Revise boundary                      | 12/12/05         |
| 5. Meet with City Engineer              | 12/15/05         |
| 6. Neighborhood meeting (optional)      | 1/12/06          |
| 7. Submit petition to City staff        | 1/20/06          |
| 8. Petition presented to City Council   | 2/14/06          |

**PHASE II: FORMATION OF LID**

- |  |         |
|--|---------|
| 9. Council requests Engineering Report       | 2/14/06 |
| 10. Specht deposits funds                    | 2/17/06 |
| 11. Preliminary Eng. Report completed        | 4/14/06 |
| 12. Council adopts Report, calls for hearing | 5/9/06  |
| 13. Public Hearing                           | 6/16/06 |
| 14. Adoption of LID Ord. and assessment roll | 6/16/06 |

**PHASE III: CONSTRUCTION DRAWINGS**

- |  |         |
|--|---------|
| 15. Complete Final construction drawings | 7/21/06 |
| 16. Construction loan                    | 7/28/06 |
| 17. Advertise for bids                   | 7/28/06 |
| 18. Award bid                            | 9/12/06 |

**PHASE IV: CONSTRUCTION**

- |                                |          |
|--------------------------------|----------|
| 19. Construction starts        | 9/25/06  |
| 20. Construction completed     | 12/22/06 |
| 21. Acceptance of improvements | 1/31/07  |

22. Final costs tabulated 2/28/07

**PHASE V: FINAL ASSESSMENT ROLL**

23. Final engineering rpt/assessment roll 3/30/07

24. Council adopts final assessment roll 4/24/07

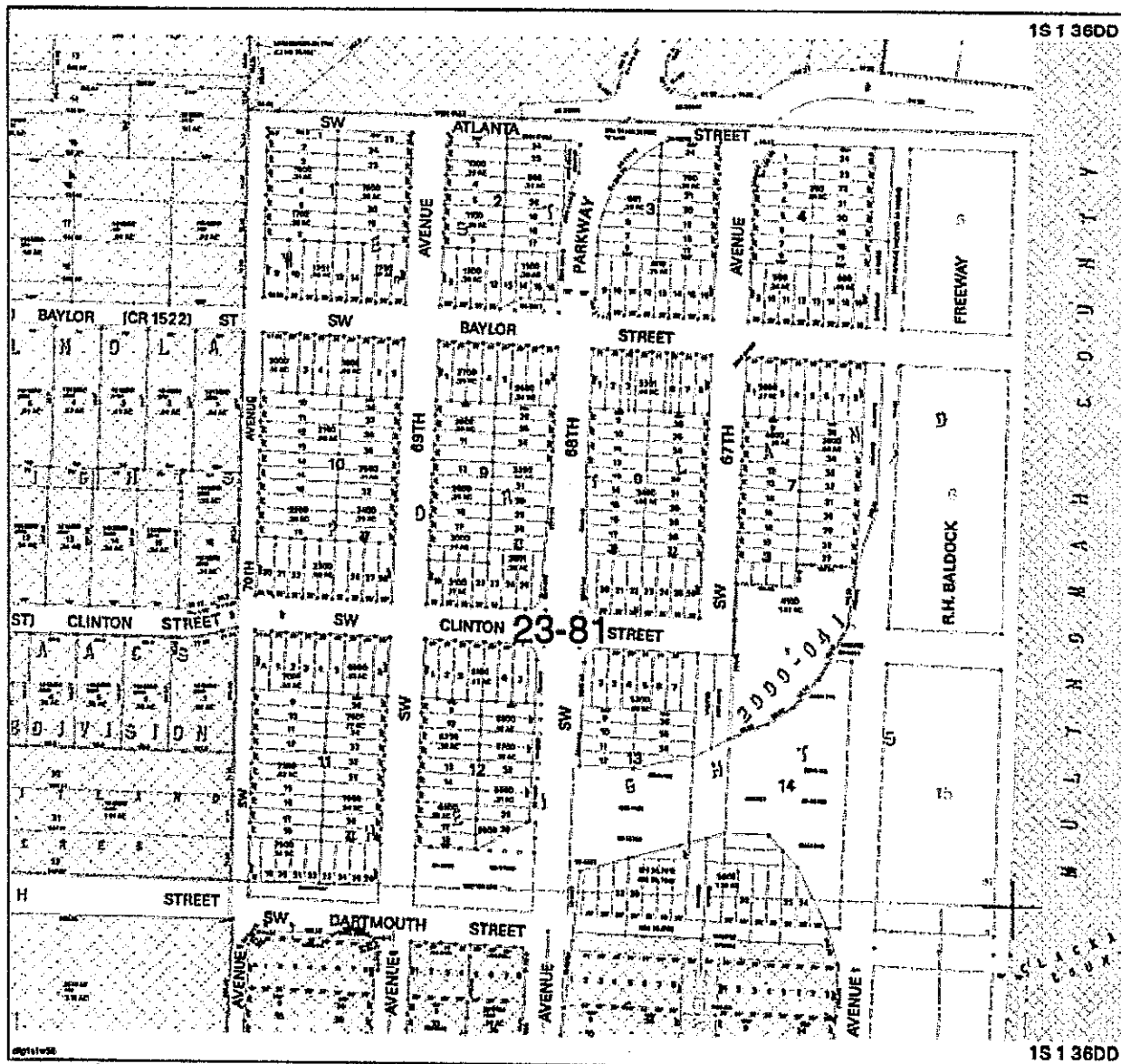
**PHASE VI: SALE OF BONDS**

25. Sale of assessment bonds 6/15/07

26. First assessment notice 1/15/08

**Tigard Triangle Portal**  
**72<sup>nd</sup> Ave at HWY 217 On/Off Ramp Intersection**





1S 1 36DD

WASHINGTON COUNTY OREGON  
SECTION 36  
SCALE 1" = 100'

24	21	26	24	26	21
1	8	9	8	7	1
12	7	6	5	11	12
13	16	17	16	14	13
24	20	20	21	23	24
25	30	30	27	26	25
24	31	32	32	34	24
1	8	9	8	7	1

FOR ADDITIONAL MAPS VIEW OUR WEBSITE AT  
www.washingtoncounty.net

20	21	22	23
24	25	26	27
28	29	30	31
32	33	34	35

SECTION 36

Consolidated Tiers Per 1810400

PLAT DATE: July 02, 2004  
FOR ASSESSMENT PURPOSES  
ONLY. DO NOT RELY ON  
FOR OTHER USE

**ASSOCIATION  
CARTOGRAPHY  
INCORPORATION**

**TIGARD  
1S 1 36DD**



February 17, 2006

SPECHT PROPERTIES  
SPECHT DEVELOPMENT

15300 S.W. Milliken Way • Beaverton, OR 97006  
503/646-8202 Fax 503/626-0703  
www.spechtproperties.com

Mr. Agustin P. Duenas  
City Engineer  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, OR 97223

Re: Tigard Triangle LID

Dear Gus:

Thank you for the opportunity to meet with you and Marco Cabanillas yesterday. Per your request, we have summarized our agreement as it pertains to the deposit for the Preliminary Engineer's Report:

- Specht shall have the opportunity to review and discuss the scope of the Request for Proposal for the Preliminary Engineering Report.
- The City of Tigard ("the City") will use its consultant selection process to select a consultant to prepare the Preliminary Engineering Report and associated work for the LID.
- Specht will deposit funds equal to the consultant's cost to prepare the Preliminary Engineering Report, plus a reasonable estimated amount for City Staff's involvement in the Project subsequent to City Council approving the resolution to prepare the Preliminary Engineering Report.
- The deposit by Specht Development, Inc. will be held by the City to mitigate the risk of paying for the Preliminary Engineering Report should the LID not be formed for any reason. If Council forms the LID, all costs to prepare the Preliminary Engineering Report (from the date of the resolution) will be included in the LID as part of the LID costs and will be included in the assessments to benefited property owners. As a result, at the time the City Council forms the LID, the deposit money will be returned to Specht.
- Should the City Council not form the LID, any funds not used shall be returned to Specht.
- Specht reserves the right to withdraw its support of the LID at any time. At that time, any unused funds from the deposit will be returned to Specht.

We look forward to working with the City on this Project and are excited for the chance to provide tangible benefits to the community. Should you have any questions, please do not hesitate to contact me.

Best Regards,

SPECHT DEVELOPMENT, INC.

Todd Sheaffer  
Chief Operating Officer

C: Marco Cabanillas  
Ed Murphy, LDC Design Group  
Greg Specht, Pete Kirby

AGENDA ITEM # \_\_\_\_\_  
FOR AGENDA OF February 28, 2006

CITY OF TIGARD, OREGON  
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution Approving Budget Amendment #10 to the FY 2005-06 Budget to Increase Appropriations in the Gas Tax Fund for funding of the Preliminary Engineer's Report for the Proposed Local Improvement District (LID) for infrastructure improvements in the Tigard Triangle.

PREPARED BY: Michelle Wareing DEPT HEAD OK PLH CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

Shall the City Council approve Budget Amendment # 10 to increase appropriations in the Gas Tax Fund for funding of the Preliminary Engineer's Report for the proposed Local Improvement District (LID) for infrastructure improvements in the Tigard Triangle?

STAFF RECOMMENDATION

Staff recommends approval of Budget Amendment # 9.

INFORMATION SUMMARY

Specht Development, Inc. has submitted a petition requesting the formation of a Local Improvement District (LID) to improve certain streets within the Tigard Triangle. The proposed improvements include street and utility improvements to SW 68<sup>th</sup> Avenue, SW 69<sup>th</sup> Avenue, and SW 70<sup>th</sup> Avenue between SW Dartmouth Street and SW Baylor Street and SW Dartmouth Street and SW Clinton Street between SW 68<sup>th</sup> Avenue and SW 70<sup>th</sup> Avenue, all within the Tigard Triangle.

A draft Preliminary Evaluation Report to determine the feasibility of the proposed LID was submitted to the City Council at its February 21, 2006 meeting. The Preliminary Evaluation Report determined that the proposed LID appears feasible and recommended that Council take the next step in the LID formation process by authorizing the preparation of a Preliminary Engineer's Report. The City Council will be voting on a resolution to authorize the preparation of a Preliminary Engineer's Report at the February 28, 2006 meeting.

A budget amendment is needed to fund this project as the FY 2005-06 Adopted Budget does not include appropriations for this project. The total Preliminary Engineer's Report cost is \$125,000; however, it is anticipated that only \$70,000 of this total cost will be incurred in FY 2005-06. Specht Development, Inc. has agreed to deposit, in advance of any work, the amount needed for the preparation of the Preliminary Engineer's Report with the understanding that the City will include the cost of preparing the report in the total cost of the LID, if and when the City establishes the district. Even if the LID is not formed, Specht Development's deposit will be used to fund the report's cost.

Although Specht Development's deposit will actually fund the cost of the report, for budgetary purposes it is necessary to do a contingency transfer of \$70,000 from the Gas Tax Fund to the Gas Tax Capital Improvement

Project budget to appropriate the necessary funds. If Council does not approve the resolution to authorize the preparation of a Preliminary Engineer's Report then this budget amendment is not necessary.

---

OTHER ALTERNATIVES CONSIDERED

Do not approve Budget Amendment #10.

---

COUNCIL GOALS AND TIGARD BEYOND TOMORROW VISION STATEMENT

By constructing improvements to upgrade the street infrastructure in the Tigard Triangle, the Local Improvement District (LID) would address the findings of the 2002 Tigard Transportation System Plan that identified the Tigard Triangle as an area where future transportation problems appear significant.

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ATTACHMENT LIST

Resolution including Attachment A.

---

FISCAL NOTES

The Resolution will transfer \$70,000 from the Gas Tax Fund contingency to the Gas Tax Capital Improvement Project budget. Specht Development's deposit will be placed into the Gas Tax Fund to actually pay for the report preparation.

CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 06-\_\_\_\_\_

A RESOLUTION APPROVING BUDGET AMENDMENT #10 TO THE FY 2005-06 ADOPTED BUDGET TO INCREASE APPROPRIATIONS IN THE GAS TAX FUND FOR FUNDING OF THE PRELIMINARY ENGINEER'S REPORT FOR THE PROPOSED LOCAL IMPROVEMENT DISTRICT (LID) FOR INFRASTRUCTURE IMPROVEMENTS IN THE TIGARD TRIANGLE

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WHEREAS, Specht Development Inc. has submitted a petition requesting the formation of a Local Improvement District (LID) to improve certain streets within the Tigard Triangle; and

WHEREAS, the proposed LID boundary within the Tigard Triangle is defined as SW 68<sup>th</sup> Avenue, SW 69<sup>th</sup> Avenue, and SW 70<sup>th</sup> Avenue between SW Dartmouth Street and SW Baylor Street and SW Dartmouth Street and SW Clinton Street between SW 68<sup>th</sup> Avenue and SW 70<sup>th</sup> Avenue; and

WHEREAS, at the February 21, 2006 City Council meeting, Council reviewed and discussed a Preliminary Evaluation Report prepared by Engineering staff, which determined that the proposed LID was feasible and recommended that the City Council take the next step in the LID formation process by authorizing the preparation of a Preliminary Engineer's Report; and

WHEREAS, the City Council approved a resolution at the February 28, 2006 Council meeting authorizing the preparation of a Preliminary Engineer's Report; and

WHEREAS, it is anticipated that \$70,000 of total Preliminary Engineer's Report cost of \$125,000 will be incurred in FY 2005-06; and

WHEREAS, Specht Development, Inc. has agreed to deposit, in advance of any work, the amount needed for the preparation of the Preliminary Engineer's Report with the understanding that the City will include the cost of preparing the report in the total cost of the LID; and

WHEREAS, it is necessary to amend the FY 2005-06 Adopted Budget to increase appropriations to fund the preparation of the Preliminary Engineer's Report.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1:     The FY 2005-06 Budget is hereby amended as shown in Attachment A to this resolution to transfer \$70,000 from the Gas Tax Fund contingency to the Gas Tax Capital Improvement Project budget.

SECTION 2:     This resolution is effective immediately upon passage.



PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
Mayor - City of Tigard

ATTEST:

\_\_\_\_\_  
City Recorder - City of Tigard

Attachment A  
FY 2005-06  
Budget Amendment # 10

FY 2005-06 Adopted Budget	Budget Amendment # 10	Adopted Revised Budget
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**Gas Tax Fund**

Resources

Beginning Fund Balance	\$1,552,821		\$1,552,821
Grants	228,025		228,025
Interagency Revenues	2,407,900		2,407,900
Development Fees & Charges	11,420		11,420
Interest Earnings	31,300		31,300
Other Revenues	108,636		108,636
Transfers In from Other Funds	0		0
Total	\$4,340,102	\$0	\$4,340,102

Requirements

Development Services Program	445,000		445,000
Program Expenditures Total	\$445,000	\$0	\$445,000
Debt Service	\$0		\$0
Capital Improvements	\$1,943,361	\$70,000	\$2,013,361
Transfers to Other Funds	\$1,305,617		\$1,305,617
Contingency	\$350,000	(\$70,000)	\$280,000
Total Requirements	\$4,043,978	\$0	\$4,043,978
Ending Fund Balance	296,124		296,124
Grand Total	\$4,340,102	\$0	\$4,340,102